

# Conduit Plans & Mortgage Modification Mediation Program Plans

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## A Simplified Guide to Drafting Chapter 13 Plans In Arizona<sup>1</sup>

Historically, chapter 13 plans throughout Arizona allowed the Debtors to make their post-petition mortgage payments outside of the plan and directly to the lender. However, in October 2008, the Bankruptcy Judges in Tucson signed a Standing Order that made the Conduit Plan mandatory in two situations: 1) if the Debtor was in default on their pre-petition mortgage payments; or 2) if the Debtor later fell behind on their post-petition mortgage payments.<sup>2</sup> The adoption of mandated Conduit Plan terms is consistent with changes occurring in other Bankruptcy Courts throughout the country.<sup>3</sup>

The notable component of a chapter 13 “Conduit Plan” is that the regular, post-petition mortgage payments are paid by the chapter 13 Trustee through the plan, rather than paid outside the plan by the Debtor. This requires a higher plan payment, but reduces the Debtors’ budget and relieves the Debtor from mailing a separate check to the mortgage company.

Briefly, the benefits of a Conduit Plan include a reduction in the number of motions for relief from stay, which typically cost the debtor about \$1,000. The Conduit Plan also reduces the frequency of disputes between the Debtor and their largest creditor over whether or when a payment was sent or received, an especially valuable factor with the frequent transfers of mortgages by lenders and servicers. Chapter 13 Trustees maintain thorough records that can be reviewed by debtors and creditors at [www.ndc.org](http://www.ndc.org).<sup>4</sup> Chapter 13 cases with Conduit Plans have a higher likelihood of completing successfully. For a more thorough explanation of the benefits of a Conduit Plan and their acceptance in other jurisdictions. See *In re Perez*, 339 B.R. 385 (Bankr. S.D. Tex. 2006).

Drafting a conduit plan is not difficult, but it does require attention to detail and a shift in your thinking. What follows is a hypothetical example and instructions on how to draft the plan. We will then address the issue of Mortgage Modification Mediation (MMM) Program Plans, which include conduit payments.

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<sup>2</sup> [http://www.azb.uscourts.gov/sites/default/files/EWH\\_CH13\\_Standing\\_Order.pdf](http://www.azb.uscourts.gov/sites/default/files/EWH_CH13_Standing_Order.pdf).

<sup>3</sup> In 2015, there were 177 Chapter 13 Trustees and 128 of them administered conduit plans. On average, the percentage fee charged by conduit Trustees is 2% lower than non-conduit Trustees (although the experience of individual Trustees may differ based on caseload and other factors). As a result, conduit plans reduce the cost of Chapter 13 for all debtors.

Please keep in mind that percentage fees are set by the United States Trustee and are a function of the reasonable and necessary costs of running the trust operation. The percentage fee is not the compensation paid to the Trustee individually and the Trustee has no authority to negotiate the percentage fee.

<sup>4</sup> Trustees also maintain thorough records of all plan payments received from debtors and disbursements made to creditors. In addition to the electronic records that are available online, Trustees can usually produce the fronts and backs of all negotiable instruments and an image of the envelope in which the debtor transmitted their plan payment. In a dispute, these thorough records can be invaluable in resolving disputes between debtors and creditors.

# Conduit Plans

## Basic Hypothetical Fact Pattern:

Debtor has a mortgage with a \$1,271 per month payment and arrears of \$9,183.00. The plan payment necessary to fund other parts of the plan is \$752 (inclusive of trustee fees). The plan duration is 60 months. The applicable commitment period is 36 months.<sup>5</sup> The plan also includes a car and unsecured claims which are not detailed here. The chapter 13 petition was filed on December 2, 2016.

## Drafting a Conduit Plan that will work:

The plan payment needs to be the total of the conduit payment and the rest of the funding necessary for the plan. In this example, that would be \$2,023 for a duration of 60 month.

Paragraph (A), the plan payment section, should look similar to this:

**(A) Plan Payments and Property to be Submitted to the Plan.**

(1) Plan payments start on 1/2/17. The Debtor shall pay the Trustee as follows:

\$ 2,023. each month for month 1 through month 60 .  
 each month for month through month .  
 each month for month through month .

The proposed plan duration is \$ 60 months. The applicable commitment period is 36 months. Section 1325(b)(4).

(2) In addition to the plan payments, Debtor will submit the following property to the Trustee:  
TAX REFUNDS TO THE EXTENT THAT THEY EXCEED \$1,000.

Paragraph (C)(4) should look similar to this:

<u>Creditor/Servicing Agent &amp; Property Description</u>	<u>Collateral Value &amp; Valuation Method</u>	<u>Post-Petition Mortgage Payments</u>	<u>Estimated Arrearage</u>	<u>Arrearage Through Date</u>
<u>BIG MORTGAGE LLC</u>	<u>\$ 200,000.00</u>	<u>\$ 1,271.00</u> Included in plan payment. <input type="checkbox"/>	<u>\$ 9,183.00</u>	<u>2/1/17</u>

See Section (J), Varying Provisions.

<sup>5</sup> Note that it is not unusual for conduit plans to exceed the applicable commitment period because it sometimes takes longer to provide all of the needed funding while guaranteeing that the mortgage is being paid.

The varying provisions should look similar to this:

- (J) **Varying Provisions.** The Debtor submits the following provisions that vary from the Local Plan Form, Sections (A) through (H):
- (1) The conduit shall be paid by Trustee through the plan beginning in month 1 of the plan for the mortgage payment
  - (2) due to the creditor on Jan. 2017. The conduit shall be paid through the plan for a total 60 monthly mortgage
  - (3) payments. For any month where the balance on hand in Debtor's account is insufficient to allow disbursement of
  - (4) the conduit payment and adequate protection payments that have come due, the amount due for that month will
  - (5) be paid to creditor on the next regular disbursement date when Debtor's account balance has sufficient funds.

The Plan Payment Summary section should look similar to this:

(K) **Plan Payment Summary.** If there is a discrepancy between paragraphs (A) - (J) and paragraphs (K) - (M), then the provisions of paragraphs (A) - (J) and the confirmed plan control.

(1) Trustee's compensation (10% of plan payments).....	\$ 12,138.00
(2) Ongoing post-petition mortgage payments.....	\$ 76,260.00
(3) Administrative expenses and claims.....	\$ 3,500.00
(4) Priority claims.....	\$ 0.00
(5) Prepetition mortgage or lease arrears, or amount to cure defaults, including interest.....	\$ 9,183.00
(6) Secured personal property claims, including interest.....	\$ 19,036.00
(7) Amount to unsecured nonpriority claims.....	\$ 1,263.00
<b>Total of plan payments.....</b>	<b>\$ 121,380.00</b>

**Note:** When you total the plan payments provided for in Section (A) (\$2,023 x 60 = \$121,380) it should equal the Total Plan Payments in section (K).

### **What the Trustee will do internally:**

As a threshold matter, you will always have one conduit payment that will come due before the first plan payment is made to the trustee because plan payments start 30 days after the petition date. You will usually have at least one more conduit come due before the trustee will have funds on hand and information sufficient to commence conduit payments.

Fortunately, the standing order provides a way to deal with this.

“(V)(B) The Trustee shall allow as an administrative expense an amount equal to two full regular monthly payments inclusive of escrow deposits and two associated late fees. This allowance shall reimburse Real Property Creditor post petition delinquencies that may accrue until the Trustee begins payments to that creditor. Once Trustee begins disbursements which include Conduit Payments, such payments shall constitute current payments on the mortgage regardless of the contractual due date.”<sup>6</sup>

<sup>6</sup> Note that since the enactment of *Fed.R.Bankr.Proc.* 3002.1, the Trustee does not add in late fees. Said fees will be reflected in a Notice of Post-Petition Fees And Costs if charged.

That means the trustee will set up three claims payable to the mortgage creditor as follows:

Claim Description	Amount	Month	Total to be Paid
Pre-Petition Arrears	\$ 9,183.00		
Ongoing Mortgage Payment aka Conduit	\$ 1,271.00	58	\$ 73,718.00
Administrative Claim aka Post-Petition Arrears	\$ 1,271.00	2	\$ 2,542.00
			<b>\$ 76,260.00</b>

**Note:** The Ongoing Mortgage Payment and the Administrative Claim equal the amount in the Plan Payment Summary for Ongoing post-petition mortgage payments:

(K) <b>Plan Payment Summary.</b> If there is a discrepancy between paragraphs (A) - (J) and paragraphs (K) - (M), then the provisions of paragraphs (A) - (J) and the confirmed plan control.	
(1) Trustee's compensation (10% of plan payments).....	\$ 12,138.00
(2) Ongoing post-petition mortgage payments.....	<b>\$ 76,260.00</b>
(3) Administrative expenses and claims.....	\$ 3,500.00
(4) Priority claims.....	\$ 0.00
(5) Prepetition mortgage or lease arrears, or amount to cure defaults, including interest.....	\$ 9,183.00
(6) Secured personal property claims, including interest.....	\$ 19,036.00
(7) Amount to unsecured nonpriority claims.....	\$ 1,263.00
<b>Total of plan payments.....</b>	<b>\$ 121,380.00</b>

**DO's and DON'T's:**

**DO** start your plan payments within 30 days of the petition date as required by §1326(a)(1).

**DO** state the exact date when plan payments are to begin and be due.

**DO** include this language in varying provisions: *“The conduit shall be paid by Trustee through the plan beginning in month <<plan month>> of the plan for the mortgage payment due to creditor on <<date>>. The conduit shall be paid through the plan for a total of <<number of months>> monthly mortgage payments. For any month where the balance on hand in Debtor’s account is insufficient to allow disbursement of the conduit payment and adequate protection payments that have come due, the amount due for that month will be paid to creditor on the next regular disbursement date when Debtor’s account balance has sufficient funds.”*

**DO consider including this language in the varying provisions:** *“If a Notice of Post-Petition Fees and Costs is subsequently filed and the Trustee has sufficient funding to pay said claim, the Trustee is authorized to disburse without further order.”*

**DO NOT** provide for reduced or zero payments at the beginning of the case if you have a conduit.

**DO NOT** instruct your client to make mortgage payments directly after the petition is filed.

**DO NOT** provide for more than two (2) months of a post-petition arrearage (administrative claim)

# Mortgage Modification Mediation Plans

Drafting a plan under the MMM Program is similar to a regular conduit plan, but there are a few quirks to consider. As a starting place, you should familiarize yourself with the MMM Program Procedures which can be found here:

[http://www.azb.uscourts.gov/sites/default/files/Arizona\\_MMM\\_Procedures\\_FINAL.pdf](http://www.azb.uscourts.gov/sites/default/files/Arizona_MMM_Procedures_FINAL.pdf).

The initial difference between a conduit plan and an MMM Conduit plan, is that the Ongoing Mortgage Payment is replaced with the Estimated Monthly Payment (“EMP”) AND the Trustee holds these amounts until the mediation is completed.

The EMP is defined as “the lesser of (a) 31% of the Debtor’s gross monthly income less any amount paid towards HOA fees due for the property (exclusive of applicable trustee’s fees) or (b) the regular monthly payment, or such other amount designated by the secured creditor for the property subject to the MMM Program.”

## Basic Hypothetical Fact Pattern:

Debtor has a mortgage with a \$1,271 per month payment and arrears of \$9,183.00. The Debtor’s gross monthly income is \$3,000 and is otherwise a candidate for a mortgage modification. The amount necessary to fund the balance of the plan is \$746.50, inclusive of the trustee percentage fee. The attorney’s fees will be increased by \$1,750 as allowed by the MMM Program, but will require a separate fee application (see page 23 of the MMM procedures). The plan duration is 60 months. The applicable commitment period is 36 months. The plan also includes a car and unsecured claims which are not detailed here. The chapter 13 petition was filed on February 2, 2017.

## Drafting a Plan That Complies with the MMM Procedures:

In the example 31% of the gross monthly income is \$930 which is less than the mortgage payment of \$1,271. Accordingly, the proposed plan payment would be \$930 + \$746.50 = \$1,676.50.

The plan payment section should look similar to this:

<p><b>(A) Plan Payments and Property to be Submitted to the Plan.</b></p> <p>(1) Plan payments start on <u>3/2/17</u>. The Debtor shall pay the Trustee as follows:</p> <table><tr><td><u>\$ 1,676.50</u></td><td>each month for month <u>1</u></td><td>through month <u>60</u></td><td>.</td></tr><tr><td></td><td>each month for month</td><td>through month</td><td>.</td></tr><tr><td></td><td>each month for month</td><td>through month</td><td>.</td></tr></table> <p>The proposed plan duration is \$ <u>60</u> months. The applicable commitment period is <u>36</u> months. Section 1325(b)(4).</p> <p>(2) In addition to the plan payments, Debtor will submit the following property to the Trustee: <u>TAX REFUNDS TO THE EXTENT THAT THEY EXCEED \$1,000.</u></p>	<u>\$ 1,676.50</u>	each month for month <u>1</u>	through month <u>60</u>	.		each month for month	through month	.		each month for month	through month	.
<u>\$ 1,676.50</u>	each month for month <u>1</u>	through month <u>60</u>	.									
	each month for month	through month	.									
	each month for month	through month	.									

Paragraph (C)(4) section should look similar to this:

<u>Creditor/Servicing Agent &amp; Property Description</u>	<u>Collateral Value &amp; Valuation Method</u>	<u>Post-Petition Mortgage Payments</u>	<u>Estimated Arrearage</u>	<u>Arrearage Through Date</u>
BIG MORTGAGE LLC	\$ 200,000.00	\$ 930.00 Included in plan payment. <input type="checkbox"/>	\$ 9,183.00	2/2/17

See Section (J), Varying Provisions. DEBTOR WILL SEEK REFERRAL TO THE MMM PROGRAM W/1 90 DAYS OF THE PETITION.

Note the check in the "See Section (J), Varying Provisions box.

Paragraph (F) should look similar to this:

(F) **Attorney Application for Payment of Attorney Fees.** Counsel for the Debtor has received a prepetition retainer of \$ \$ 1,000.00 to be applied against fees and costs incurred. Fees and costs exceeding the retainer shall be paid from funds held by the Chapter 13 Trustee as an administrative expense. Counsel will be paid as selected in paragraph (1) or (2) below:

(1) **Flat Fee.** Counsel for the Debtor has agreed to a total sum of \$ \$ 4,500.00 to represent the Debtor. Counsel has agreed to perform the following services through confirmation of the plan:

- All of the below, except Additional Services.
- Review of financial documents and information.
- Consultation, planning, and advice, including office visits and telephone communications.
- Preparation of Petition, Schedules, Statement of Financial Affairs, Master Mailing List.
- Preparation and filing of Chapter 13 Plan, Plan Analysis, and any necessary amendments.
- Attendance at the § 341(a) meeting of creditors.
- Resolution of creditor objections and Trustee recommendations, and attendance at hearings.
- Reviewing and analyzing creditor claims for potential objections, and attendance at hearings.
- Responding to motions to dismiss, and attendance at hearings.
- Responding to motions for relief from the automatic stay, and attendance at hearings.
- Drafting and mailing of any necessary correspondence.
- Preparation of proposed order confirming the plan.
- Representation in any adversary proceedings.
- Representation regarding the pre-filing credit briefing and post-filing education course.

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**Additional Services.** Counsel for the Debtor has agreed to charge a flat fee for the following additional services provided to the Debtor after confirmation of the plan:

- Preparation and filing of Modified Plan \$ \_\_\_\_\_.
- Preparation and filing of motion for moratorium \$ \_\_\_\_\_.
- Responding to motion to dismiss, and attendance at hearings \$ \_\_\_\_\_.
- Defending motion for relief from the automatic stay or adversary proceeding \$ \_\_\_\_\_.
- Preparation and filing of any motion to sell property \$ \_\_\_\_\_.
- Other MMM Program \$1,750 after submitting fee application.

All other additional services will be billed at the rate of \$ \_\_\_\_\_ per hour for attorney time and \$ \_\_\_\_\_ per hour for paralegal time. Counsel will file and notice a separate fee application detailing the additional fees and costs requested. Counsel will include *all* time expended in the case in the separate fee application.

See Section (J), Varying Provisions.

The varying provisions should look similar to this:

- (J) Varying Provisions.** The Debtor submits the following provisions that vary from the Local Plan Form, Sections (A) through (H):
- (1) DEBTOR WILL SEEK REFERRAL TO THE MMM PROGRAM W/ 90 DAYS OF THE PETITION. POST-
  - (2) PETITION MORTGAGE PAYMENT IS THE ESTIMATED MONTHLY PAYMENT PER THE MMM PROGRAM
  - (3) PROCEDURES SECTION (2)(F) AND WILL BE HELD BY THE TRUSTEE EACH MONTH PENDING
  - (4) FURTHER COURT ORDER. A SEPARATE FEE APPLICATION WILL BE FILED FOR SERVICES IN
  - (5) CONNECTION WITH THE MMM PROGRAM.

The Plan Payment Summary should look similar to this:

**(K) Plan Payment Summary.** If there is a discrepancy between paragraphs (A) - (J) and paragraphs (K) - (M), then the provisions of paragraphs (A) - (J) and the confirmed plan control.

(1) Trustee's compensation (10% of plan payments).....	\$ 10,058.00
(2) Ongoing post-petition mortgage payments.....	\$ 55,800.00
(3) Administrative expenses and claims.....	\$ 5,250.00
(4) Priority claims.....	\$ 0.00
(5) Prepetition mortgage or lease arrears, or amount to cure defaults, including interest.....	\$ 9,183.00
(6) Secured personal property claims, including interest.....	\$ 19,036.00
(7) Amount to unsecured nonpriority claims.....	\$ 1,263.00
<b>Total of plan payments.....</b>	<b>\$ 100,590.00</b>

If the mortgage modification goes permanent, the plan will be amended/modified. Remember that the mortgage arrears will probably be eliminated with the modification. We nevertheless recommend that you include this amount in your initial plan and provide for it in the plan funding, if possible. That way you will bring more funds in at the beginning of the case, which will be available to fund attorney's fees upon confirmation. This could ultimately reduce the duration of the plan when it is modified.

## **Frequently Asked Questions:**

### **What if I need to amend/modify the plan and the Trustee has already disbursed conduit payments, trial modification payments and/or permanent modification payments?**

This is a common occurrence. Draft the plan as usual, but be sure to account for the plan payments and the conduit payments already made by the Trustee. The plan payment schedule in Section (A)(1) of the plan should list the actual payment amounts made from the date the plan was filed to the present time. The payment schedule should also include an accurate accounting of the conduit payments already made. This information can be obtained free of charge by debtors and their counsel at [www.ndc.org](http://www.ndc.org).

### **The trial modification payments are due on the first of the month, but the Trustee disburses on the first business day of the month. Doesn't that make the trial payment late?**

No. Pursuant to the MMM Procedure "Estimated Monthly Payments received timely by the Trustee pursuant to these procedures shall be deemed payments made timely pursuant to any trial loan modification agreement or final loan modification agreement under the MMM Program." See page 15.

Nevertheless, the Trustee will strive to disburse funds prior to the first of the month. In the Trustee's discretion, this may be done through a pre-write disbursement the last week of the month.

### **What will happen if the mortgage payment changes during the plan?**

This is a common occurrence. If the mortgage payment goes UP, the Trustee will file a Notice of Payment Change that will increase the plan payment by the increase in the mortgage payment plus 10% for the trustee percentage fee, which, in turn, will increase the plan base (total plan funding). Your client will need to begin making the increased payment amount, but no other action is required.

If the mortgage payment goes DOWN, the situation is a little different. The Trustee will file Notice of Payment Change advising that the mortgage payment has gone down, but the plan payment will not automatically change. The excess funds will go to fund the plan, which may be post-petition fees and costs or unsecured creditors. If you want to reduce the plan payment, you will need to file a modified/amended plan to reduce the payment amount.

### **What will happen if the plan provides for a conduit payment and adequate protection payments?**

Conduits and adequate protection are paid at the same time. This means that your plan payments need to be large enough to cover both payments, plus the 10% fee. If there is not enough money on hand, the Trustee will hold the conduit payment until there is enough money to make a full payment. The Trustee may hold the adequate protection payment as well, although partial adequate payments can be made in the Trustee's discretion.



### How will my client know that it is time to resume making their mortgage payments directly?

When the conduit plan is nearing the end, the Trustee will send a letter to you and your client advising when your client will need to resume making payments directly. This will usually occur within six (6) months of the end of the plan. The Trustee will send a second letter as a reminder the month before direct payment resume. This letter will be copied to you and the mortgage servicer.

Keep in mind that if there have been plan payment moratoriums during the plan, your client may need to resume direct mortgage payments AND continue making plan payments. This will be a burden. The Trustee's letter will tell you how much more is due on the plan and instruct your client to make both payments.

### My client made their plan payment using TFSbillpay.com on the 28<sup>th</sup> of the month, why didn't the Trustee make the conduit when s/he disbursed?

While TFSbillpay.com and other online payment methods are convenient, the funds are not transmitted immediately to the Trustee. The funds are typically held for 10 business days. As a result, if the plan payment is made less than 10 days before the next disbursement day, the funds will not go out. This means the mortgage creditor may charge late fees that will be reflected in a Notice of Post-Petition Fees and Costs that will require additional funding at the end of the plan.

### What if my client needs a breathing period to catch up financially at the beginning of the case?

DO NOT provide for zero plan payments if you have filed a conduit. Post-petition mortgage payments must be made and are not subject to a moratorium or modification, unlike regular plan payments. If your client absolutely must have a reduced burden in the first few months, the non-conduit portion of the plan payment could be shifted to the last few months of the plan, provided the plan payments at the beginning are sufficient to cover the conduit AND trustee fees (calculate at 11.111% because the 10% fee is calculated based on the amount RECEIVED by the Trustee rather than the amount disbursed—it will usually be less, but you must provide adequate funding for all circumstances).

For example:

<b>(A) Plan Payments and Property to be Submitted to the Plan.</b>			
(1)	Plan payments start on.	1/2/17	. The Debtor shall pay the Trustee as follows:
\$ 1,412	each month for month	1	through month 2 .
\$ 2,050	each month for month	3	through month 57 .
\$ 2,701	each month for month	58	through month 60 .

IF you insist on proposing zero payments at the beginning of the case, you will need to do the following:

- Limit it to the two (2) months allowed in the Standing Order for an administrative claim.
- Be prepared for the mortgage creditor to object to confirmation
- Be prepared for the mortgage creditor to file a stay relief action
- Be prepared for the creditor to file a Notice of Post-Petition Fees for late fees and accrued interest.
- Be prepared to lose. There is no provision in the Standing Order for your client to miss post-petition mortgage payments and to make them up over time.

### **My client has fallen behind on payments and needs a moratorium mid-plan, what do I do?**

You can file a moratorium for plan payments. However, there is no mechanism for a moratorium on conduit payments. As a result, the conduit payments will be late and the mortgage lender may charge late fees or additional interest on payments made on post-petition arrearages. A lump sum payment may be required at the end of the plan in order to cure all post-petition arrearages accrued which were not paid through the plan payments.

Give special attention to cases where the moratorium also increases the duration of the plan. Let's consider an example: Your original conduit plan is 48 months long, has payments of \$1,500 that include the conduit, and is scheduled to end in December of 2018. You seek a moratorium that extends the plan duration by five (5) months to May 2019, but you don't increase the plan funding. That means that in January 2019, your client will continue to make plan payments of \$1,500, BUT YOUR CLIENT WILL ALSO HAVE TO RESUME MAKING THE MORTGAGE PAYMENTS DIRECTLY that same month.<sup>7</sup> In other words, a moratorium now means double payments then unless you increase the plan funding. Remember that this is no legal authority for modifying a mortgage payment other than curing pre-petition arrearages over the term of the plan. Your client has no protection from stay relief if they miss payments post-petition, unlike other plan payments.

If you don't want this to happen, you will need to modify the plan and provide for extra conduit payments at the end of the plan. You will also need to be prepared for an objection, and late fees and charges from the mortgage lender.

### **The Trustee does not actually collect at 10% fee, why do I have to provide funding for that full amount in the plan?**

Each Trustee's percentage fee is different and is set by the United States Trustee. The percentage fee can, and will, change several times during the duration of the plan. While the percentage fee may not be 10% right now, it could increase to that amount at any time. As a result, in order to provide sufficient plan funding, you must plan on a full 10% fee.

The difference between the 10% and the amount actually collected by the Trustee can provide a useful safety cushion for your clients. If they are ever late on plan payments or if there is a moratorium, interest on secured claims will increase. The excess percentage fee will often cover those additional amounts, eliminating the need to provide additional funding at the end of the plan. Any amount that is not used in that way, will go to general unsecured creditors.

The Trustee recognizes that in rare cases this excess funding for the percentage fee could make the difference between the debtor completing the plan and failing. In those situations, there is a creative fix that can be employed. A few years into the plan, you can file a modified plan and reduce the total plan funding by the amount of the fee that was not actually collected by the Trustee up until that point (meaning the petition date to the filing of the modified plan).

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<sup>7</sup> Technically such moratoriums violate the Standing Conduit Order because you are not continuing the conduit the entire term of the plan. As a result, the Trustee could object to the moratorium unless you increase the plan funding to cover those additional conduit payments or file a motion to be excused from the conduit.

For instance, in our original fact pattern, assume that during the first two years of the plan the Trustee only collected 6% from the plan payments made, allowing for a 4% difference (\$1,942)<sup>8</sup>. This amount can be backed out of the total plan payments going forward and total funding.

Paragraph (A) should look similar to this:

**(A) Plan Payments and Property to be Submitted to the Plan.**

(1) Plan payments start on 1/2/17. The Debtor shall pay the Trustee as follows:

\$ 2,023.00 each month for month 1 through month 24 .

\$ 1,970.00 each month for month 25 through month 59 .

\$ 1,936.00 each month for month 60 through month 60 .

The proposed plan duration is \$ 60 months. The applicable commitment period is 36 months. Section 1325(b)(4).

(2) In addition to the plan payments, Debtor will submit the following property to the Trustee:  
TAX REFUNDS TO THE EXTENT THAT THEY EXCEED \$1,000.

Paragraph (K) should look similar to this:

**(K) Plan Payment Summary.** If there is a discrepancy between paragraphs (A) - (J) and paragraphs (K) - (M), then the provisions of paragraphs (A) - (J) and the confirmed plan control.

(1) Trustee's compensation (10% of plan payments). (orig. \$12,138 - \$1,942 uncollected to date)	\$ <u>10,196.00</u>
(2) Ongoing post-petition mortgage payments	\$ <u>76,260.00</u>
(3) Administrative expenses and claims	\$ <u>3,500.00</u>
(4) Priority claims	\$ <u>0.00</u>
(5) Prepetition mortgage or lease arrears, or amount to cure defaults, including interest	\$ <u>9,183.00</u>
(6) Secured personal property claims, including interest	\$ <u>19,036.00</u>
(7) Amount to unsecured nonpriority claims	\$ <u>1,263.00</u>
<b>Total of plan payments</b>	\$ <u>119,438.00</u>

This is the rare situation where line (1) will not be exactly 10% of the total plan payments, and the difference is clearly explained.

<sup>8</sup> For purposes of this example, we will simply take 4% of the total plan payments during the first two years or  $\$2,023 \times 24 = \$48,552 \times 4\% = \$1,942$ . In reality, you should review [www.ndc.org](http://www.ndc.org) and use the actual trustee percentage fees collected during the case. This can be done by going to the Account Ledger tab and selecting the Trustee under the Payees dropdown.