

As a result of negotiations regarding relief from stay or treatment under a chapter 13 plan, debtors and creditors may agree to modify mortgages to include new terms. When such agreements do not involve the incurring of new debt, the debtors' requests for approval of such relief have been frequently characterized by the filing parties as motions to modify mortgage. When such modifications are consensual, the Court has been accepting, without motion or hearing, consent orders that are signed by counsel for the debtor, the mortgage creditor, and the chapter 13 trustee. In connection therewith, the chapter 13 trustees in this district have identified language which they require in order for them to consent. The order should provide that there will be no extension of additional funds beyond what is already owed; that payments to other lien holders under the plan will not be affected; and that the proposed modification has no detrimental effect on other creditors and is in the best interest of the debtor and the estate. The order should also address whether payments to the creditor, whose loan is to be modified under the plan, will continue or terminate upon entry of the order.

If a consent order is not presented with the motion to modify mortgage, the motion should be scheduled passively pursuant to SC LBR 9013-4 and noticed to the proper parties in interest. The passive notice list has been updated to clarify that such motions may be filed with a fifteen day notice period. If the modification to the mortgage involves new debt, a motion to incur debt may be filed, which also should be passively noticed to all creditors and parties in interest according to the Local Rule.