

LOSS MITIGATION PROGRAM AND PROCEDURES



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LOSS MITIGATION PROGRAM AND PROCEDURES

I. PURPOSE.

The Loss Mitigation Program (“LMP”) is designed to function as a forum for debtors and lenders to reach a consensual resolution when a debtor’s residential property is at risk of foreclosure. The LMP aims to facilitate such resolution by opening and maintaining the lines of communication between the debtors’ and lenders’ decision makers. The LMP encourages the parties to finalize a feasible and beneficial agreement with the assistance and supervision of the United States Bankruptcy Court for the Western District of Pennsylvania (the “Court”).

II. LOSS MITIGATION DEFINED.

The term “loss mitigation” includes the full range of solutions that may prevent either the loss of a debtor’s property to foreclosure, increased costs to the lender, or both. Loss mitigation includes, but is not limited to, loan modification, loan refinance, forbearance, short sale, or surrender of the property in full satisfaction. The terms of a loss mitigation solution will vary in each case according to the particular needs and goals of the parties.

III. ELIGIBILITY.

The following definitions describe the types of parties, properties and loans that are eligible for participation in the Loss Mitigation Program.

A. DEBTOR.

The term “debtor” means any individual debtor in a case filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code, including joint debtors.

B. PROPERTY.

The term “property” means any real property used as a principal residence in which an eligible debtor holds an interest.

C. LOAN.

The term “loan” means any mortgage, lien or extension of money or credit secured by eligible property, regardless of whether the loan: (1) is considered to be “subprime” or “non-traditional,” (2) was in foreclosure prior to the bankruptcy filing, (3) is the first or junior mortgage or lien on the property, or (4) has been “pooled,” “securitized,” or assigned to a creditor or to a trustee.

D. CREDITOR.

The term “creditor” refers to any mortgage holder, assignee, servicer or trustee of an eligible loan.

IV. ADDITIONAL PARTIES.

A. OTHER CREDITORS.

Where it may be necessary or desirable to obtain a global resolution, any party may request, or the Court may direct, that multiple creditors participate in loss mitigation.

B. CO-DEBTORS AND THIRD PARTIES.

Where the participation of a co-debtor or other third party may be necessary or desirable, any party may request, or the Court may direct, that such party participate in loss mitigation, to the extent that the Court has jurisdiction over the party.

C. CHAPTER 13 TRUSTEE.

The Chapter 13 Trustee may participate in loss mitigation to the extent that such participation would be consistent with the Chapter 13 Trustee’s duties under the Bankruptcy Code.

V. COMMENCEMENT OF LOSS MITIGATION.

A. BY THE DEBTOR.

1. Except as provided in subsection 3., a debtor seeking to commence the LMP must file LMP Form 1 (Notice of Request for Loss Mitigation – By the Debtor) with the Court and serve on the creditor and its counsel, if known, LMP Form 1, together with a proposed LMP Form 3 (Loss Mitigation Order), at any time after the commencement of the case until three (3) days before the first date scheduled for the First Meeting of Creditors. The debtor must also file a certificate of service substantially in the form of Local Bankruptcy Form 7, Certificate of Service. The debtor shall specify in LMP Form 1 the amount of adequate protection payments proposed to be made by the debtor to the creditor during the loss mitigation period. (See Section VII. B). The creditor shall have fourteen (14) days to object. If no objection is filed, the Court may enter a Loss Mitigation Order substantially in the form of LMP Form 3 (Loss Mitigation Order).

2. Except as provided in subsection 3., if a debtor seeks to engage in loss mitigation after the time prescribed in subsection 1., the debtor must file a motion with the Court, on notice to the creditor and where applicable, the Chapter 13

Trustee, establishing good cause for the failure to have filed LMP Form 1 within the time period specified in Section V. A.1. The motion must specify the amount of adequate protection payments proposed to be made by the debtor to the creditor during the loss mitigation period. (See Section VII. B).

3. A debtor whose bankruptcy case is pending on October 1, 2012, may seek to commence the LMP as prescribed in subsection 1 by filing LMP Form 1 on or before December 1, 2012.

B. BY A CREDITOR.

A creditor seeking to commence the LMP must file with the Court and serve on the debtor and debtor's counsel, if any, LMP Form 2 (Notice of Request for Loss Mitigation – By the Creditor), together with a proposed order substantially in the form of LMP Form 3 (Loss Mitigation Order). The creditor must also file a certificate of service substantially in the form of Local Bankruptcy Form 7, Certificate of Service. The debtor shall have fourteen (14) days to object. If no objection is filed, the Court may enter the Loss Mitigation Order.

C. BY THE BANKRUPTCY COURT.

The Court may enter a Loss Mitigation Order at any time, provided that the parties bound by said order have had notice and opportunity to object and to be heard.

D. OPPORTUNITY TO OBJECT.

Where any party files an objection, a Loss Mitigation Order shall not be entered until the Court, after adequate notice, has either held a hearing to consider the objection, or overrules the objection without a hearing for failing to include specific grounds why loss mitigation would not be successful. Grounds for objection may include, but are not limited to, the assertion that loss mitigation has been requested in bad faith, or the assertion that loss mitigation has been previously requested by the debtor and has been denied. If a party objects on the grounds that loss mitigation has been requested in bad faith, the assertion must be supported by objective reasons.

VI. LOSS MITIGATION ORDER.

The Loss Mitigation Order required by Section V. shall be substantially in the form of LMP Form 3 (Loss Mitigation Order) and must set forth the time frames for action by the parties, as specified below.

A. REQUIRED TIME FRAMES FOR ACTION BY THE PARTIES.

1. Creditor registration on the Portal (see Section VIII.A.1): 14 days from entry of Loss Mitigation Order.

2. Debtor submission of Creditor's Initial Package (as defined in Section VIII.A.1): 35 days from entry of Loss Mitigation Order.
3. Creditor acknowledgement of receipt of Creditors Initial Package from the debtor: 10 business days from receipt of Creditor's Initial Package from the debtor.
4. Creditor designation of contact persons: 10 business days from receipt of Creditor's Initial Package from the debtor.
5. Status Report: 60 days from entry of order.
6. Termination of loss mitigation: 90 days from entry of order.
7. Final Report: 14 days from termination of the loss mitigation period.

Upon the submission of a consent order on notice to the trustee or an application on notice to the other party and the trustee, the Court may modify the time frames for action by the parties. For extension or early termination of the loss mitigation period, see Sections IX.B. and C.

B. EFFECT.

Upon the entry of a Loss Mitigation Order, the following shall apply to the Loss Mitigation Parties:

1. If a relief from stay motion pursuant to section 362(d) is pending when a Loss Mitigation Order is entered or if such a motion is filed during the loss mitigation period, the Court may condition the stay upon compliance by the debtor with the fulfillment of the debtor's obligations under the Loss Mitigation Order. If the debtor fails to comply with the loss mitigation process and Loss Mitigation Order, the creditor may apply to terminate the Loss Mitigation Order as specified in Section IX.C., and to obtain relief from the stay.
2. In a Chapter 13 case, the Chapter 13 Trustee may recommend entry of an Interim Confirmation Order substantially in the form of LMP Form 5 (Interim Confirmation Order) pending the resolution of the loss mitigation process. Under the terms of the Interim Confirmation Order, distribution to administrative, priority, and secured creditors, including the payment of arrearages, if any, and adequate protection, may be set forth, and a date for a Confirmation Hearing, consistent with the terms of the Loss Mitigation Order, will be fixed.
3. Pursuant to Federal Rule of Evidence 408, all communications and information exchanged by the Loss Mitigation Parties during the loss mitigation procedure are without prejudice, and will be inadmissible in any subsequent judicial proceedings.

VII. DUTIES UPON COMMENCEMENT OF LOSS MITIGATION.

Upon entry of a Loss Mitigation Order, the Loss Mitigation Parties shall have the following obligations:

A. GOOD FAITH.

The Loss Mitigation Parties shall negotiate in good faith. A party that fails to participate in loss mitigation in good faith may be subject to sanctions.

B. ADEQUATE PROTECTION PAYMENTS BY DEBTORS.

Upon filing LMP Form 1 (Request for Loss Mitigation – By the Debtor), the debtor must make adequate protection payments to the creditor in an amount that is at least 60% of the monthly principal and interest payment that is contractually due, plus 100% of any required monthly escrow payment. If the creditor objects to the amount of the adequate protection payment proposed by the debtor, after adequate notice, the Court shall hold a hearing to consider the objection.

If the debtor is required to direct adequate protection payments to a different address than the debtor utilized prior to the filing of the bankruptcy case, the creditor shall promptly advise the debtor of the correct address and any other requirements to ensure the proper posting and processing of the payments.

C. STATUS AND FINAL REPORTS.

1. The Loss Mitigation Parties shall file LMP Form 4 (Loss Mitigation Status Report) within the time set by the Court in the Loss Mitigation Order. The debtor shall be responsible for submitting LMP Form 4, but must do so on notice to and in cooperation with the creditor. The Status Report shall include a printout of the account history page from the Portal. A Status Report may include a request for an extension of the loss mitigation period. The Status Report must be accompanied by a proposed order substantially in the form of LMP Form 6 (Order Extending the LMP).

2. The Loss Mitigation Parties shall file LMP Form 8 (Loss Mitigation Final Report) within the time set by the Court in the Loss Mitigation Order. The debtor shall be responsible for submitting LMP Form 8, but must do so on notice to and in cooperation with the creditor. The Loss Mitigation Final Report must set forth the outcome of the loss mitigation process in the particular case, including, but not limited to the terms of any loss mitigation reached between the parties as identified in Section II. The Loss Mitigation Final Report shall include a printout of the account history page from the Portal.

D. BANKRUPTCY COURT APPROVAL.

The Loss Mitigation Parties shall seek the Court's approval of any agreement reached during loss mitigation in accordance with Section X.

VIII. LOSS MITIGATION PROCESS.

A. INITIAL CONTACT.

1. Within fourteen (14) days after the issuance of the Loss Mitigation Order, the creditor shall ensure that it is registered on the Portal and all of its initial loss mitigation requirements (“Creditor’s Initial Package”) is available on the Portal. (Registration on the Portal is a one-time event – i.e., once the creditor is registered on the Portal, the creditor will not have to register again). Creditor’s Initial Package shall specify the forms and documentation the creditor requires to initiate a review of debtor’s request for loss mitigation options.
2. Within thirty-five (35) days after the issuance of the Loss Mitigation Order, the debtor shall upload and submit through the Portal a completed Creditor’s Initial Package.
3. Within ten (10) business days of the borrower’s submission, creditor shall acknowledge receipt of same and designate the single point of contact for debtor’s review.

The debtor may contact the person or persons designated by the creditor as the loss mitigation contact at any time. The purpose of the initial contact is to ensure that the creditor and the debtor exchange the necessary documentation required for the creditor to evaluate the debtor for available loss mitigation programs and create a framework for the discussion at the loss mitigation session to ensure that each of the Loss Mitigation Parties will be prepared to participate meaningfully in the loss mitigation session – it is not intended to preclude the introduction of additional issues or proposals that may arise during the session.

B. LOSS MITIGATION SESSIONS.

Loss mitigation sessions may be conducted in person, telephonically, online via the Portal, or by video conference. Prior to the conclusion of each loss mitigation session, the Loss Mitigation Parties should discuss whether additional sessions are necessary and set the time and method for conducting any additional sessions, including a schedule for the exchange of any further information or documentation that may be required.

C. BANKRUPTCY COURT ASSISTANCE.

At any time during the loss mitigation period, a Loss Mitigation Party may request a settlement conference or status conference with the Court.

D. SETTLEMENT AUTHORITY.

Each Loss Mitigation Party must have a person with full settlement authority present during a loss mitigation session. During a status conference or settlement conference with the Court, the person with full settlement authority must either attend the conference in person or be available by telephone or video conference.

E. DOCUMENT PORTAL.

While the LMP provides a forum for debtors and lenders to discuss the debtor's options with respect to their residential property, structural issues often prevent debtors and creditors from communicating effectively. In an effort to resolve these communication issues, the Court has mandated the use of a secure online portal (the "Portal") that is designed to facilitate the communication and document exchange between debtor and creditor. The Portal shall also provide for the much needed transparency in the loss mitigation process by capturing all activity electronically and making the transactional history available to all stakeholders, including the Court.

The Court believes that the Portal is a valuable tool and that a single point of contact is advantageous in streamlining the loss mitigation process. Accordingly, when a debtor's attorney submits a loss mitigation request to a creditor, debtor's attorney shall use the Portal to engage the creditor in the loss mitigation process by submitting the approved Loss Mitigation Order together with all of the creditor's required forms and documents through the Portal. Any creditor that submits a loss mitigation request or otherwise becomes subject to a Loss Mitigation Order shall register through the Portal and make available a complete list of all of the creditor's required forms and documents on the Portal. Debtor's attorney and the creditor will also continue to use the Portal to communicate with the creditor to the extent possible regarding the loss mitigation request. Use of the Portal will require debtors to pay a Portal Fee of \$25 to the administrator of the Portal. If use of the Portal creates an undue hardship, an attorney may request permission to exchange documents and communications conventionally with the creditor. Such request should be made by motion filed with the Court and shall specify why the use of the Portal creates such an undue hardship.

Free training on the Portal shall be available to all attorneys. Attorneys should refer to the Court's website page on loss mitigation for Portal training materials including a web portal attorney manual and contact information if WebEx training is desired. The Court's website will maintain a list of approved Portals.

Because Pro Se filers may not have access to a computer and therefore may be unable to use the Portal, Pro Se filers may submit their loss mitigation packages outside of the Portal.

IX. DURATION, EXTENSION AND EARLY TERMINATION.

A. DURATION.

The initial loss mitigation period shall be proposed by the parties and shall be set by the Court in the Loss Mitigation Order.

B. EXTENSION.

1. Agreement.

The Loss Mitigation Parties may consent to an extension of the loss mitigation period. A party may file a request for extension in writing or include the request for extension in LMP Form 4 (Loss Mitigation Status Report), along with a proposed order substantially in the form of LMP Form 6 (Order Extending the LMP). A request for extension must be supported by a factual statement in support of the extension and served on all parties in interest by filing a Certificate of Service substantially in the form of Local Bankruptcy Form 7. Any objection to such request shall be filed within three (3) business days of the request.

2. No Agreement.

Where a Loss Mitigation Party does not consent to the request for an extension of the loss mitigation period, the Court shall schedule a hearing to consider whether further loss mitigation sessions are appropriate. The Court may order an extension if it appears that:

- (a.) a further loss mitigation session is likely to provide a substantial benefit to a Loss Mitigation Party;
- (b.) the party opposing the extension has not participated in good faith or has failed in a material way to comply with these procedures;
- (c.) the party opposing the extension would not be prejudiced, or
- (d.) for other cause shown.

C. EARLY TERMINATION.

1. Upon Request of a Loss Mitigation Party.

A Loss Mitigation Party may request that the loss mitigation period be terminated for cause, and shall state the reason(s) for the request. Except where early termination is necessary to prevent irreparable injury, loss or damage, the request shall be made on notice to all other Loss Mitigation Parties, and if necessary, the Court may schedule a hearing to consider the request. The request must be accompanied by a proposed order substantially in the form of LMP Form 7 (Order Terminating the LMP).

2. Dismissal of the Bankruptcy Case Not Required.

- (a.) A debtor is not required to request dismissal of the bankruptcy case in order to effectuate a resolution.
- (b.) Where a debtor requests voluntary dismissal of the bankruptcy case during the loss mitigation period, the debtor's dismissal request shall indicate whether the debtor agreed to any settlement or resolution with a Loss Mitigation Party during the loss mitigation period or intends to accept an offer of settlement made by a Loss Mitigation Party during the loss mitigation period.

X. RESOLUTION.

The Court will consider any agreement reached during loss mitigation and may approve same, subject to the following:

A. IMPLEMENTATION.

1. Subject to subsection 2., a resolution may be noticed and implemented in any manner permitted by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), including, but not limited to, a stipulation, sale, plan of reorganization or amended plan of reorganization, or a motion to approve a loan modification.

2. In a Chapter 13 case in which a loan modification has been agreed upon, the debtor shall file a motion to approve the loan modification, on 14 days' notice to the Chapter 13 Trustee and to all creditors whose claims are secured by liens against the residence. A copy of the loan modification agreement must accompany the motion. The form of order presented with the motion must provide the following, where applicable:

- (a) If the loan modification approved by the Court impacts on the provisions of the debtor's Chapter 13 plan, a modified plan must be filed within 10 days of the entry of the order approving the loan modification.
- (b) If the loan modification approved by the Court results in a material change in the debtor's expenses, the debtor shall file an amendment to the impacted schedules reflecting income and expenses (Schedules I and J) within 10 days of the entry of the order approving the loan modification.

B. FEES, COSTS OR CHARGES.

1. If a resolution provides for a creditor to receive payment or reimbursement of any fee, cost or charge that arose from loss mitigation, all such fees, costs or charges shall be disclosed to the debtor, the trustee, the U.S. Trustee, and to the

Court prior to approval of the resolution. Counsel for the creditor[s] is entitled to receive a reasonable fee for all work involved in connection with the mortgage modification, including requesting and reviewing documents, and will clearly delineate such fee in the completed agreement or by amended proof of claim.

2. Counsel for the debtor(s) is entitled to receive reasonable compensation for all work involved in connection with the mortgage modification and shall file an application for allowance of attorney fees and costs with the Court, or alternatively accept a “no look” fee in the amount of \$1,000.00 to be paid as an administrative expense. Counsel may also be paid as an administrative expense for counsel’s payment of the Portal Fee of \$25.00 on behalf of the Debtor(s).

C. SIGNATURES.

Consent to the resolution shall be acknowledged in writing by (1) an authorized representative of the creditor, (2) the debtor, and (3) the debtor’s attorney, if applicable.

D. HEARING.

Where a debtor is represented by counsel, a resolution may be approved by the Court without further notice, or upon such notice as the Court directs. Where a debtor is not represented by counsel, a resolution shall not be approved until after the Court has conducted a hearing at which the debtor shall personally appear.