

LOSS MITIGATION PROGRAM PROCEDURES FOR CASES ASSIGNED TO JUDGE GRANT

I. PURPOSE

The Loss Mitigation Program is designed to function as a forum for debtors and lenders to reach consensual resolution whenever the debtor's personal residence is at risk of foreclosure. The Loss Mitigation Program aims to facilitate resolution by opening the lines of communication between the debtors' and lenders' decision-makers. While the Loss Mitigation Program stays certain bankruptcy deadlines that might interfere with the negotiations or increase costs to the Loss Mitigation parties, the Loss Mitigation Program also encourages the parties to finalize any agreement under bankruptcy court protection, instead of seeking dismissal of the bankruptcy case.

II. LOSS MITIGATION DEFINED

The term "Loss Mitigation" is intended to describe the full range of solutions that may avert either the loss of a debtor's property to foreclosure, increased costs to the lender, or both. Loss mitigation commonly consists of the following general types of agreements, or a combination of them: 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. Many, if not all, Loss Mitigation programs offered by lenders are structured to determine whether or not a debtor may retain the property while making a payment at a desired level. Loss Mitigation programs are frequently highly structured programs by most lenders and if offered by a lender will be offered under strict guidelines often imposed by external parties, such as the Federal Housing Authority, the Department of Veterans Affairs, Federal National Mortgage Association and Federal Home Loan Mortgage Corporation and other institutional investors and guarantors of mortgage backed loans. As a result, Loss Mitigation frequently result with only one (1) offer being made by the creditor.

Loss Mitigation does not abrogate the ability of parties to reach a solution to any contested matter outside of the Loss Mitigation process.

III. ELIGIBILITY

The following definitions are used to 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 13 of the Bankruptcy Code, including joint debtors.

B. PROPERTY

The term "Property" means any real property used as the Debtor's principal residence as of the date the bankruptcy petition was filed.

C. LOAN

The term “Loan” means any mortgage, lien or extension of money or credit secured by eligible Property or stock shares in a residential cooperative, regardless of whether or not 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 servicer or to a trustee.

D. CREDITOR

The term “Creditor” refers to any holder, mortgage servicer or trustee of an eligible Loan.

IV. ADDITIONAL PARTIES

A. 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 bankruptcy court may direct, that such party participate in Loss Mitigation, to the extent that the bankruptcy court has jurisdiction over the party, or if the party consents to participation in Loss Mitigation.

B. CHAPTER 13 TRUSTEE

The Chapter 13 Trustee has the duty in Section 1302(b)(4) of the Bankruptcy Code to “advise, other than on legal matters, and assist the debtor in performance under the plan.” Any party may request, or the bankruptcy court may direct, the Chapter 13 Trustee to participate in Loss Mitigation to the extent that such participation would be consistent with the Chapter 13 Trustee’s duty under the Bankruptcy Code. In addition, the Chapter 13 trustee may on his or her own initiative request to be a party to Loss Mitigation if requested by another party.

C. MEDIATOR

A party to Loss Mitigation may request a mediator be appointed after the initial Loss Mitigation conference. The request may only be made for cause, when the moving party can demonstrate that a party is not fully cooperating in the Loss Mitigation process. Depending on the representations made in the motion and any response filed to the motion, the court may or may not hold a hearing to determine whether or not to appoint a mediator. The costs of a mediator shall be born by both the Debtor and Creditor equally. Where the court orders a mediator be appointed, the process of selecting a mediator shall be governed by General Order 2001-02.

No party may request a mediator be appointed before the initial Loss Mitigation Conference and any such request will be summarily denied.

V. COMMENCEMENT OF LOSS MITIGATION

Parties are encouraged to request Loss Mitigation as early in the case as possible, but Loss Mitigation may be initiated at any time, by any of the following methods:

A. BY THE DEBTOR

1. In the absence of a contested matter, as defined in Fed. R. Bankr. P. 9014, the Debtor may request Loss Mitigation with a particular Creditor by filing a motion with the court at any time after the Creditor has filed a proof of claim and appeared by an attorney. The motion shall be served on the attorney for the Creditor. The Creditor shall have 14 days to object. If no objection is filed, the court may issue a Loss Mitigation Order.

2. In the event of a contested matter, as defined in Fed. R. Bankr. P. 9014, including, but not limited to, objections to confirmation, motions for relief from stay and abandonment and motions to dismiss, the Debtor may request Loss Mitigation with a Creditor by filing a motion with the court 7 days prior to the initial hearing on the contested matter. The court will consider the request for Loss Mitigation at the time of the initial hearing on the contested matter and may issue a Loss Mitigation Order.

3. In the event that Loss Mitigation is requested for a contested matter and the court issues a Loss Mitigation Order, the contested matter may be stayed pending the outcome of Loss Mitigation.

B. BY A CREDITOR

1. In the absence of a contested matter, as defined in Fed. R. Bankr. P. 9014, a Creditor may request Loss Mitigation with the Debtor by filing a motion with the court at any time. The motion shall be served on the attorney for the Debtor and the Debtor. The Debtor shall have 14 days to object. If no objection is filed, the court may issue a Loss Mitigation Order.

2. In the event of a contested matter, as defined in Fed. R. Bankr. P. 9014, including, but not limited to, objections to confirmation, motions for relief from stay and abandonment and motions to dismiss, the Creditor may request Loss Mitigation with the Debtor by filing a motion with the court 7 days prior to the initial hearing on the contested matter. The court will consider the request for Loss Mitigation at the time of the initial hearing on the contested matter and may issue a Loss Mitigation Order.

3. In the event that Loss Mitigation is requested for a contested matter and the court issues a Loss Mitigation Order, the contested matter may be stayed pending the outcome of Loss Mitigation.

C. BY THE BANKRUPTCY COURT

The bankruptcy court may enter a Loss Mitigation Order at any time, provided that the parties that will be bound by the Loss Mitigation Order have had notice and an opportunity to object.

D. OPPORTUNITY TO OBJECT

If a party files an objection, the Court may hold a hearing before issuing an order granting or denying Loss Mitigation. In determining whether or not to order Loss Mitigation the court may consider the representations of the parties or counsel in determining whether or not Loss Mitigation would be successful.

VI. LOSS MITIGATION PROCESS

A. SCHEDULING

In the event that the court orders Loss Mitigation, the schedule for Loss Mitigation shall be as follows:

1. Seven days after the entry of the Loss Mitigation Order, the Creditor's attorney shall provide the Debtor's attorney (or Debtor, if pro se) a list of information required from the Debtor in order to consider the Debtor for Loss Mitigation.

2. Twenty-One days after the Creditor's attorney provides the Debtor's attorney with a list of required information, the Debtor's attorney (or Debtor, if pro se) shall tender to Creditor's attorney the information requested in Creditor's initial request. In addition to submitting the information to Creditor's attorney, the Debtor may submit the information to any other parties the Debtor sees as appropriate or useful. The requested information shall be tendered to Creditor's attorney as a complete package and not piecemeal.

3. Upon delivery of the requested information, the parties shall, within seven days conduct a settlement conference by telephone upon a date and time agreed to by the parties, but in any event not later than seven days after the requested information is tendered by the Debtor's attorney to Creditor's attorney.

4. The parties may schedule subsequent conferences by telephone after the initial conference if addition information is required.

5. The parties may modify the schedule for proceeding with Loss Mitigation only if all parties agree to modify the schedule.

B. COMMUNICATION

1. All communications shall be made by the attorneys for the parties represented in bankruptcy. In the event that the Debtor is pro se, the Debtor shall communicate through the attorney for Creditor.

2. All communications and information exchanged by the parties during the Loss Mitigation process shall be inadmissible as evidence in any proceeding pursuant to Federal Rule of Evidence 408.

3. The Loss Mitigation conference shall be conducted by telephone.

C. GOOD FAITH

The parties to Loss Mitigation shall negotiate in good faith. A party that fails to participate in Loss Mitigation in good faith may be subject to sanctions. A party that requests Loss Mitigation in bad faith may be subject to sanctions. For purposes of this rule, if a Creditor considers the information submitted by a Debtor under certain pre-established guidelines, such as HAMP, HAFA, FHA loss mitigation regulations, guidelines and rules established by Federal

National Mortgage Association and Federal Home Loan Mortgage Corporation or other investors or parties holding an interest in the mortgage, then it shall be presumed that the Creditor acted in good faith. A representative for a Creditor is not required to go outside of these pre-established rules and regulations in considering the Debtor for Loss Mitigation.

D. STATUS REPORT

Either the Creditor or Debtor or both shall file a short report with the court at the conclusion of every Loss Mitigation conference briefly stating what occurred at the settlement conference, if there is a subsequent conference, if Loss Mitigation is at an end without an agreement or if an agreement will be filed with the court. A party seeking termination of Loss Mitigation must file a separate motion under Section F. If all parties to Loss Mitigation agree that Loss Mitigation has concluded and should be terminated, they may file a stipulation as provided for under Section F.

E. SETTLEMENT AUTHORITY

Each party to Loss Mitigation must have a person with full settlement authority present during a Loss Mitigation conference. It is understood that an agreement reached at the time of the conference will not be binding until such time that any documentation memorializing the agreement is executed by all parties concerned and that the terms of any agreement shall be governed by the document memorializing the agreement.

F. TERMINATION

After the initial Loss Mitigation conference any party may request that the Loss Mitigation process be terminated. In filing a motion to terminate the Loss Mitigation process, the moving party shall set out why they believe the process should be terminated, which may include the inability to offer a Loss Mitigation solution to the Debtor by the Creditor or the failure of the Debtor to tender the requested information by the Creditor. A party to Loss Mitigation may file an objection to a motion to terminate loss mitigation no later than 7 days after the motion is filed. If an objection is filed, the court may conduct a hearing to determine whether or not to terminate Loss Mitigation. If all parties to Loss Mitigation agree that Loss Mitigation has concluded, all parties shall submit a stipulation terminating Loss Mitigation.

If Loss Mitigation is pending, either before an initial conference or after, and the Debtor converts to another chapter under the Bankruptcy Code, Loss Mitigation is terminated.

The court may, sua sponte, terminate Loss Mitigation if it believes that Loss Mitigation is not productive.

Upon termination of Loss Mitigation, if no agreement is reached the parties may resume any contested matter that was stayed upon the entry of the Loss Mitigation Order.

VI. SETTLEMENT

In the event that Loss Mitigation results in an agreement (a "Loss Mitigation Agreement") between the parties to either modify the terms of repayment of the mortgage or to

provide for a structured surrender of the real estate, the Debtor's attorney (or the Debtor, if pro se), Creditor's attorney and the Chapter 13 trustee shall submit to the court a Stipulation for Loss Mitigation summarizing the terms of the Loss Mitigation Agreement and attach any writing memorializing the agreement to the stipulation, together with an appropriate motion to approve it. If the terms of the Loss Mitigation Agreement do not result in a material change to the terms of the Chapter 13 plan, the motion may ask the court to approve the Loss Mitigation Agreement without the notice otherwise required.

If the Loss Mitigation Agreement does result in a material change to the terms of the Chapter 13 plan, such as a reduced dividend to unsecured creditors, then the Debtor's attorney (or the Debtor, if pro se), Creditor's attorney and the Chapter 13 trustee shall submit to the court a Stipulation for Loss Mitigation summarizing the terms of the Loss Mitigation Agreement and attach any writing memorializing the agreement to the stipulation. In addition, the Debtor or Chapter 13 trustee shall file either an Amended Chapter 13 plan or a Motion to Modify Chapter 13 plan, if the plan has already been confirmed. The Court may then approve the Loss Mitigation Agreement after the plan is confirmed or the Motion to Modify is entered.

In filing the Stipulation for Loss Mitigation, the Chapter 13 trustee shall state whether or not the terms of the agreement will result in a material change to the terms of the Chapter 13 plan requiring an amended Chapter 13 plan or a Motion to Modify Chapter 13 plan.

The court shall review the Stipulation for Loss Mitigation and may approve it if it is in the best interest of the Debtor or the bankruptcy estate. The Debtor is not required to dismiss the bankruptcy case in order to effectuate a settlement. Upon approval of the Stipulation for Loss Mitigation, the Loss Mitigation process shall terminate.