

Amended September 19, 2013

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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 Bankruptcy 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 servicer 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 bankruptcy 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 bankruptcy court may direct, that such party participate in loss mitigation, to the extent that the bankruptcy 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. In a case filed under Chapter 11, 12 or 13.
 - (a) Except as provided in subsection (c), a debtor seeking to commence the LMP must file with the court and serve on the creditor and its counsel, if known, the Local Form, *Notice of Request for Loss Mitigation*, together with a proposed Local Form, *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 Certification of Service. The Local Form, Notice of Request for

Loss Mitigation shall 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). The creditor shall have fourteen (14) days to object. If no objection is filed, the bankruptcy court may enter a Local Form, Loss Mitigation Order.

(b) Except as provided in subsection (c), 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 the Notice of Request for Loss Mitigation 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).

(c) A debtor whose bankruptcy case is pending on the effective date of the LMP (August 1, 2011), may seek to commence the LMP as prescribed in subsection 1.

2. In a case filed under Chapter 7.

(a) A debtor seeking to commence the LMP must file with the court and serve on the creditor and its counsel, if known, the Local Form, *Notice of Request for Loss Mitigation*, together with a proposed Local Form, *Loss Mitigation Order*, within thirty (30) days after the commencement of the case. The time to commence the LMP may not be extended.

(b) After a property is abandoned by the Chapter 7 Trustee, a secured creditor may opt out of the LMP by filing a Notice of Termination of Participation in Loss Mitigation.

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, the Local Form, Notice of Request for Loss Mitigation, together with a proposed Local Form, Loss Mitigation Order. The creditor must also file a certificate of service. The debtor shall have fourteen (14) days to object. If no objection is filed, the bankruptcy court may enter the Local Form, Loss Mitigation Order.

C. BY THE BANKRUPTCY COURT.

The bankruptcy court may enter a Local Form, 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 Local Form, Loss Mitigation Order shall not be entered until the bankruptcy 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.

A. ENTRY OF ORDER.

The Local Form, *Loss Mitigation Order* must set forth the time frames for action by the parties, as specified in Section VIII.B. or C. and Section IX.A.

B. EFFECT OF ENTRY OF ORDER.

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 Standing Trustee may recommend entry of an 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 OF THE LOSS MITIGATION PARTIES.

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 a *Notice of Request for Loss Mitigation*, 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. FINAL REPORTS.

The Loss Mitigation Parties shall file the Local Form, *Loss Mitigation Final Report* within 14 days from the termination of the loss mitigation period. The debtor shall be responsible for submitting the Loss Mitigation Final Report, 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.

D. BANKRUPTCY COURT APPROVAL.

The Loss Mitigation Parties shall seek bankruptcy court approval of any agreement reached during loss mitigation in accordance with Section X.

VIII. LOSS MITIGATION PROCESS.

A. USE OF A SECURE ONLINE PORTAL.

In an effort to expedite the exchange of information between the Debtor and the Lender, the Court has mandated the use by all LMP participants of a secure online Portal. Submitting documents to the Portal provides

transparency in the loss mitigation process, making information immediately available to the parties through a secure internet site, and making the transactional history available to all stakeholders, including the court.

All communication between the LMP parties shall be sent through the Portal, unless otherwise ordered by the Court.

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 shall be included in the *Notice of Request for Loss Mitigation*, and shall specify why the use of the Portal creates 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, as well as contact information if WebEx training is desired. The Court's website will maintain a list of approved Portals.

Because self-represented debtors may not have access to a computer and therefore may be unable to use the Portal, such debtors may submit their loss mitigation packages outside of the Portal, by exchanging documents and communications conventionally.

B. SUBMISSION OF DOCUMENTATION USING THE PORTAL.

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 document requirements ("Creditor's Initial Package") are 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 submit through the Portal a completed Creditor's Initial Package. The debtor may utilize an online program that facilitates the preparation of the debtor's loan modification package (Document Preparation Software). The Court's webpage includes information about Document Preparation Software.

a. Within ten (10) business days of the debtor's submission, creditor shall acknowledge receipt of same and designate the single point of contact for debtor's review.

C. SUBMISSION OF DOCUMENTATION WHERE USE OF THE PORTAL IS EXCUSED.

1. Within 14 days after the issuance of the Loss Mitigation Order, the creditor shall designate the single point of contact, including the name and contact information of the contact, and shall specify to the debtor the forms and documentation the creditor requires to initiate a review of the debtor's request for loss mitigation options.
2. Within 21 days after receipt of the creditor's specifications regarding forms and documentation, the debtor shall provide the requested information.
3. Within 10 business days of the debtor's submission, the creditor shall acknowledge receipt of the documentation.

D. MODIFICATIONS OF TIMEFRAMES.

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 timeframes noted in paragraphs B and C above.

E. CONTACT BETWEEN THE DEBTOR AND THE CREDITOR.

1. Within 14 days after the submission of documents by the debtor, the loss mitigation contact identified by the creditor shall contact the debtor's attorney, or the debtor, if specifically authorized, and any other Loss Mitigation Party. The debtor may contact the person or persons designated by the creditor as the loss mitigation contact at any time.
2. The purpose of the contact is to create a framework for the discussion at the loss mitigation session and 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. The Loss Mitigation Parties should agree upon:
 - (a) The time, place and method for conducting the loss mitigation sessions.
 - (b) The types of loss mitigation solutions under consideration by each party.

F. LOSS MITIGATION SESSIONS.

Loss mitigation sessions may be conducted in person, telephonically, 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.

G. 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 bankruptcy court.

H. 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 bankruptcy court, the person with full settlement authority must either attend the conference in person or be available by telephone or video conference.

IX. DURATION, EXTENSION AND EARLY TERMINATION.

A. TERMINATION OF LOSS MITIGATION PERIOD.

The initial loss mitigation period shall terminate 90 days from the entry of 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 the Court's Local Form, *Application for Extension or Early Termination of Loss Mitigation Period* together with the Court's Local Form, *Order Respecting Request for Extension or Early Termination of the Loss Mitigation Period*. The applicant must serve all loss mitigation parties and file a *Certification of Service*. 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 bankruptcy court shall schedule a hearing to consider whether further loss mitigation sessions are appropriate. The bankruptcy 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 by filing the Court's Local Form, *Application for Extension or Early Termination of Loss Mitigation Period* together with the Court's Local Form, *Order Respecting Request for Extension or Early Termination of the Loss Mitigation Period*. 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 bankruptcy court may schedule a hearing to consider the request. The applicant must also file a *Certification of Service*.

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) Upon the Request of a Debtor.

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 bankruptcy 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 Standing 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.

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 bankruptcy court prior to approval of the resolution.

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