

Amended December 17, 2019

**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 loan modification or refinance. 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 LMP.

A. DEBTOR.

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

B. PROPERTY.

The term “property” means any real property 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 standing 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) A debtor seeking to commence the LMP must file with the court and serve on the creditor, its counsel, if known, the trustee and U.S. trustee Local Form, *Notice of Request for Loss Mitigation*, together with proposed Local Form, *Loss Mitigation Order*, at any time after the commencement of the case until 3 days before the first date scheduled for the First Meeting of Creditors. The creditor, or any party in interest will have 14 days to object. If no objection is filed, the bankruptcy court may enter the Local Form, *Loss Mitigation Order*.

(b) If a debtor seeks to engage in loss mitigation after the time prescribed in subsection V.A.1.(a), the debtor must file a motion with the court, on notice to the creditor, the trustee, and U.S. 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.(a). 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).

2. The Court's Loss Mitigation Program is not available in Chapter 7 cases.

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, trustee and U.S. trustee, Local Form, *Notice of Request for Loss Mitigation*, together with proposed Local Form, *Loss Mitigation Order*. The creditor

must also file a *Certification of Service*. The debtor shall have 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 *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* will 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 in the six (6) months prior to the Debtor's bankruptcy filing or at any time after the bankruptcy filing. 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 proposed *Loss Mitigation Order* must set forth the specified adequate protection payment amount and time frames for action by the parties, as specified in Section VIII.B or C and Section IX.A.

B. EFFECT OF REQUEST TO ENTER PROGRAM AND ENTRY OF ORDER.

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

1. A *Notice of Request for Loss Mitigation* or a motion for approval to participate in loss mitigation will not be considered as an objection to a pending motion for relief from the stay. A separate objection to the motion must be filed.
2. 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. B., and to obtain relief from the stay.
3. In a chapter 13 case, the chapter 13 standing trustee may recommend entry of an *Interim Confirmation Order* pending the resolution of the loss mitigation process. The Interim Confirmation Order may provide for distributions to creditors, including the payment of arrearages and adequate protection. A date for a Confirmation Hearing, consistent with the terms of the *Loss Mitigation Order*, will be fixed.

4. 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 have the following obligations:

A. GOOD FAITH.

The Loss Mitigation Parties will 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. At any time, if the creditor objects to the amount of the adequate protection payment proposed by the debtor, after adequate notice, the court will 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 will promptly advise the debtor of the correct address and any other requirements to ensure the proper posting and processing of the payments.

C. BANKRUPTCY COURT APPROVAL.

The Loss Mitigation Parties must seek bankruptcy court approval to enter into any final agreement reached during loss mitigation in accordance with Section X.

VIII. LOSS MITIGATION PROCESS.

A. USE OF A SECURE ONLINE 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 will 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 must 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* must register through the Portal and make available a complete list of all of the creditor's required forms and documents on the Portal. The Loss Mitigation Parties will 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 to the administrator of the Portal. If use of the Portal creates an undue hardship, a party may request permission to exchange documents and communications conventionally with the creditor. Such request must be included in the Notice of Request for Loss Mitigation and must specify why the use of the Portal creates an undue hardship. Parties may refer to the Court's web page on loss mitigation for free training materials regarding the Portal.

B. SUBMISSION OF DOCUMENTATION USING THE PORTAL.

1. Within 14 days after the issuance of the *Loss Mitigation Order*, if not already registered, the creditor must register on the Portal and ensure 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 must specify the forms and documentation the creditor requires to initiate a review of debtor's request for loss mitigation options.

2. Within 35 days after the issuance of the *Loss Mitigation Order*, the debtor must upload and submit through the Portal a completed Creditor's Initial Package.

(a) Within 14 days of the debtor's submission, creditor must 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 must designate the single point of contact, including the name and contact information of the contact, and will 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 must provide the requested information.

3. Within 14 days of the debtor's submission, the creditor must acknowledge receipt of the documentation.

D. MODIFICATIONS OF TIME FRAMES.

Upon the submission of a consent order, on notice to the trustee, and U.S. 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 must contact the debtor's attorney, or the debtor, if specifically authorized, and any other Loss Mitigation Party. The debtor, or debtor's attorney, 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 will terminate 90 days from the entry of the *Loss Mitigation Order*.

B. EXTENSION OR EARLY TERMINATION.

1. Agreement.

The Loss Mitigation Parties may consent to an extension or termination of the loss mitigation period. A party may file Local Form, *Application for Extension or*

Early Termination of Loss Mitigation Period together with Local Form, *Order Respecting Request for Extension or Early Termination of the Loss Mitigation Period*. The applicant must serve all Loss Mitigation Parties, the trustee and U.S. trustee and file a *Certification of Service*.

2. No Agreement.

Where a Loss Mitigation Party does not consent to the request for an extension or termination of the loss mitigation period, and an *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* is filed, a party may file and serve an objection to the application no later than 7 days after the Application is filed. The court may schedule a hearing on the objection in its discretion. The applicant must serve all Loss Mitigation Parties, the trustee and U.S. trustee and file a *Certification of Service*. Extension of loss mitigation may be for any period of time the Court so orders, or for a period of time consented to by the parties.

3. Dismissal of the Bankruptcy Case Not Required.

A debtor is not required to request dismissal of the bankruptcy case in order to effectuate a resolution.

4. If a case is dismissed during the loss mitigation period, loss mitigation is terminated effective on the date of the order of dismissal. If dismissal is vacated, and the parties wish to reenter the loss mitigation program, they must comply with Section V. of the *Loss Mitigation Program and Procedures*.

X. RESOLUTION.

The bankruptcy court will consider any agreement reached during loss mitigation and may grant approval to enter into same, subject to the following:

A. IMPLEMENTATION.

1. Subject to subsections 2. and 3., 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 or creditor must file a motion seeking the Court's authorization to enter into the loan modification, on 14 days' notice to the chapter 13 standing trustee, U.S. 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. Local Form *Order on Motion for Authorization to Enter into Final Loan Modification Agreement (Chapter 13)* must be submitted as a proposed order to the motion.

3. In a chapter 11 or 12 case in which a loan modification has been agreed upon, the debtor or creditor must file a motion seeking the Court's authorization to enter into

the loan modification, on 14 days' notice to the trustee, U.S. 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. Local Form *Order on Motion for Authorization to Enter into Final Loan Modification Agreement (Chapter 11 or 12)* must be submitted as a proposed order to the motion.

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 must 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 must 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, approval to enter into the agreement may be granted by the bankruptcy court without further notice, or upon such notice as the bankruptcy court directs. Where a debtor is self-represented, approval to enter into an agreement will not be granted until the bankruptcy court has conducted a hearing at which the debtor must personally appear.