

LOSS MITIGATION FREQUENTLY ASKED QUESTIONS:

- 1. If a debtor has already participated in a loan modification program (City of Providence/HUD) and it is denied pre-petition, are they eligible for the bankruptcy court program?**
- 2. If a debtor has already received a discharge in their pending case, are they eligible to participate in the bankruptcy court program?**
- 3. Is a debtor under Chapter 7 eligible to participate in the program?**
- 4. Who is served with the loss mitigation request? How and where to?**
- 5. How do I file the notice/request in ECF?**
- 6. Are there any recommended best practices for getting the loss mitigation negotiations started?**
- 7. Under the federal programs, there is a 90 day period to finalize the modification after payment of mortgage for 3 months. How will this trial modification period be handled in bankruptcy?**
- 8. How are the Chapter 13 attorney fees handled for this program?**
- 9. Who pays? Lenders will have costs.**
- 10. What role does the Chapter 13 Trustee have?**
- 11. What happens if the debtor doesn't provide required documents?**
- 12. What happens if the creditor does not respond to the LM order or provide required contact information?**
- 13. What happens if we need more time to complete the negotiations for the loss mitigation?**
- 14. If my Chapter 13 case is dismissed as a result of a successful loss mitigation, will bad faith be assumed?**

1. If a debtor has already participated in a loan modification program (City of Providence/HUD) and it is denied pre-petition, are they eligible for the bankruptcy court program?

This would be a fact question for the Judge to decide upon a request for loss mitigation. The program provides an opportunity for a creditor to object to a loss mitigation request and to present information as to why such a request would not be successful (already attempted).

2. If a debtor has already received a discharge in their pending case, are they eligible to participate in the bankruptcy court program?

Yes, any individual debtor with real property used as a principal residence is eligible for the program, whether or not they have received their discharge.

3. Is a debtor under Chapter 7 eligible to participate in the program?

Yes, individual debtors under chapters 7, 11, 12 and 13 are all eligible to participate.

4. Who is served with the loss mitigation request? How and where to?

The Debtor serves its loss mitigation notice/request on the named lender and its attorney, if known. Service addresses are found: (1) on Proof of claim form; (2) state corporation website; (3) entry of appearances; (4) lender's website - legal department, or use Bank President's name and address, if necessary; (5) on loan documents or correspondence. Service is by regular mail, but recommended practice is to also send copy by fax to lender and by email to their counsel, if known. In addition to the Notice/Request, the debtor must also serve a copy of the proposed loss mitigation order with deadlines for paragraphs 1, 5 and 6 filled in. For more information, see the attorney instructions posted on the website.

5. How do I file the notice/request in ECF?

There are several new events in ECF related to the loss mitigation process. Use the event "Loss Mitigation Notice/Request" under Other to file the document and include the proposed loss mitigation order as an attachment to the notice/request filing. This is now a PDF fillable form on the Court's website.

6. Are there any recommended best practices for getting the loss mitigation negotiations started?

Attorneys have advised the Court that it has proven helpful at the outset of the loan modification process for the debtor's attorney to contact the creditor's attorney and advise them of the loan and property situation to facilitate a smoother process.

7. Under the federal programs, there is a 90 day period to finalize the modification after

payment of mortgage for 3 months. How will this trial modification period be handled in bankruptcy?

If using the HAMP program with the trial modification requirement, seek an adjournment of the status conference until the 3month trial period is complete. This will delay confirmation, but HAMP happens quickly so may not end up adding a lot more time. This was not found to be a problem or inhibitor to program success in NYS.

8. How are the Chapter 13 attorney fees handled for this program?

Debtor's attorneys determine at outset if they will request loss mitigation and determine their fee appropriately at retention. Also, Debtor's attorneys can file fee applications or motion to amend 2016(b). Lastly, debtor's attorneys can file an Administrative POC for additional fees B part up front and part paid through the plan.

9. Who pays? Lenders will have costs.

Lenders are getting some of their costs paid for by the HAMP program. Other costs can be factored into the settlement agreement.

10. What role does the Chapter 13 Trustee have?

Because the confirmation of the plan is delayed pending the outcome of the loss mitigation process, unsecured creditors will not get paid as quickly as they normally would. The Chapter 13 trustee does not have any special role in terms of the LM process, other than to use the new data from the LM agreement to evaluate any amended plan. Confirmations are continued until the LM process is completed.

11. What happens if the debtor doesn't provide required documents?

The Lender can move to terminate the loss mitigation period based on non-cooperation.

12. What happens if the creditor does not respond to the LM order or provide required contact information?

The debtor should file a motion to compel compliance with the loss mitigation order and its terms.

13. What happens if we need more time to complete the negotiations for the loss mitigation?

The parties should file a written status report advising the Court on the progress to date and how much additional time they need to complete the negotiations, or file a motion to extend the loss mitigation deadline. Upon the filing of the status report, the Court may enter an order extending the loss mitigation period and setting a date for a written status report.

14. If my Chapter 13 case is dismissed as a result of a successful loss mitigation, will bad faith be assumed?

The program specifically provides that cases do not need to be dismissed if a loan modification is successful, and that the court can approve a settlement agreement. The suggested practice in New York is to modify the plan to pay off the debt and get the discharge right away at confirmation (to rehabilitate credit), rather than dismissing without a discharge.