



OFFICE OF THE CLERK  
**UNITED STATES BANKRUPTCY COURT**  
DISTRICT OF RHODE ISLAND

Susan M. Thurston  
Clerk of Court

Gail Kelleher  
Chief Deputy Clerk

**NOTICE OF ADOPTION**

**Amendment of Local Rules, Forms, and Appendix**

**EFFECTIVE DATE OF October 3, 2011:**

Local Rule 1006-1 (amended)  
Local Rule 5005-4 (amended)  
Local Rule 5079-1 (amended)  
Local Rule 9014-1 (amended)  
Appendix IX (amended)

**EFFECTIVE DATE OF December 1, 2011:**

Local Rule 3002-1 (amended)  
R.I. Bankr. Form W.1 (amended)

Pursuant to 28 U.S.C. § 2071, Fed. R. Civ. P. 83, Fed. R. Bankr. P. 9029, and U.S. District Court for the District of Rhode Island General Local Rule 109(h)(1) authorizing the Bankruptcy Court to make and amend local rules, the U.S. Bankruptcy Court for the District of Rhode Island hereby provides notice that the Local Rules listed above have been amended.

Copies of the amended local rules are available at the Clerk's office or on our website at [www.rib.uscourts.gov](http://www.rib.uscourts.gov). The above-referenced amendments shall apply to all cases filed on or after this date, and all cases pending in this court as of the applicable effective date.

September 30, 2011

FOR THE COURT

/s/ Susan M. Thurston  
Susan M. Thurston, Clerk

**AMENDMENTS TO THE RHODE ISLAND BANKRUPTCY  
COURT'S LOCAL RULES: EFFECTIVE OCTOBER 3, 2011**

**CLEAN COPY**

**RULE 1006-1 FILING FEE [Modified 10/3/11]**

**(a) Manner of Payment.** The filing fee commencing a case shall be paid in cash, credit card, debit card, ACH withdrawal from a registered bank account, cashier's check, or money order made payable to "Clerk, U.S. Bankruptcy Court." Payment by personal check, credit card, debit card, or by ACH withdrawal will be accepted only if the account is in the name of the attorney for the debtor, or the law firm of which the attorney for the debtor is a member, partner or associate. The applicable miscellaneous fee shall be assessed and shall be payable to the "Clerk, U.S. Bankruptcy Court" for any dishonored check. The Clerk of the Court shall maintain a list of attorneys and law firms whose checks have been dishonored, may refuse to accept the checks of such attorneys or firms, and, if circumstances warrant, may report the attorney(s) or firm(s) to the appropriate authorities.

**(b) Multiple/Erroneous Payments of Same Fee or Charge.** It is the filer's responsibility to ensure any clerk's office fee or charge is paid only once, and creditors are responsible for ascertaining that the status of the case is such that the action they seek requires a fee. Except where the payment of a fee is the error of the clerk's office, the clerk is not authorized to refund fees paid by mistake. The clerk shall deposit excess or erroneous payments into the appropriate government account.

**(c) Payment of Filing Fee in Installments.** The clerk may approve a debtor's Application to Pay the Filing Fee in Installments, if the application contains a payment schedule that provides for at least 25% of the fee at the time of the filing, and continued payments of 25% commencing within thirty (30) days of the petition date and every twenty-eight (28) days thereafter. The application to pay in installments must comply with Official Form 3A.

**(d) Nonconforming Application to Pay in Installments.** An Application to Pay the Filing Fee in Installments that does not comply with LBR 1006-1(c) shall be presented to the Court for consideration. If denied, the debtor shall immediately remit the full filing fee. Failure to timely pay the filing fee will result in the automatic dismissal of the case.

**(e) Procedure to Waive Filing Fee (Proceed in forma pauperis).** An individual who files a voluntary Chapter 7 petition may request to have all filing fees waived by filing a completed and signed Application for Waiver of the Chapter 7 Filing Fee using Official Form B3B, and if Schedule J has not been filed with the petition, R.I. Bankr. Form D. The granting of the application approves the waiver of all future filing fees which may arise in the case while pending under Chapter 7.

**(f) Nonconforming and Denied Applications For Waiver of Filing Fee.** An Application to Waive the Filing Fee that does not conform with the requirements listed in section (e) above, or is defective in any way, will be automatically denied. If an Application to Waive the Filing Fee is denied for any reason, the Court may treat the application as one to pay the filing fee in installments and the first installment will be due immediately upon entry of the order denying the waiver of the fees, and the remaining fees will be payable in accordance with LBR 1006-1(c). Failure to timely pay the full fee or the first installment will result in the automatic dismissal of the case.

**(g) Revocation or Vacating of Waiver.** The Court may revoke or vacate an order waiving the filing fee if developments in the case or administration of the estate demonstrate that the waiver was unwarranted.

**(h) Effect of Conversion.** If the filing fee of an individual Chapter 7 case is waived, and the debtor's case is later converted to one under another chapter, the debtor must pay the full filing fee for the new chapter within fourteen (14) days of conversion, or file an Application to Pay the Filing Fee in Installments.

#### **RULE 5005-4 ELECTRONIC FILING [Modified 10/3/11]**

**(a) Requirement to File Cases and Documents Electronically.** All cases filed after April 24, 2003 are part of the Court's Case Management/Electronic Case Filing (CM/ECF) System. Commencing on January 1, 2007, all petitions, motions, memoranda of law, or other pleadings and documents must be electronically filed except as expressly provided in section (c) below, or in circumstances where the Electronic Filer is prevented from filing electronically, i.e., CM/ECF System failure. "Electronic Filer" refers to those who have a court-issued log-in and password to file documents electronically. Filing of documents submitted, signed, or verified by electronic means must be consistent with technical standards established by the Judicial Conference of the United States and must comply with the within local rule and such other local rules as are applicable.

#### **(b) Eligibility and Registration for Electronic Filing; Use of Passwords.**

**(1) Eligibility.** Attorneys, United States trustees and their assistants, private trustees, and others as the Court deems appropriate, are entitled to one System password to enable the user or any support staff so authorized by the user to participate in the electronic retrieval and filing of documents within the System.

#### **(2) Registration and Training.**

##### **(A) Registration and Training Requirements:**

All applicants must register electronically for a login and password. Training modules are required for those applicants who are not already a registered user in another Bankruptcy or Federal District Court.

(i) Eligible applicants must complete the online training modules, if applicable, and register electronically for a login and password once completed. The filer must also meet the minimum system requirements.

(ii) Non-attorneys who intend to use the system for the limited purpose of filing claims and related claim activity, request for notice, petition for unclaimed funds, reaffirmation agreement, and not requiring the appearance of counsel, may register online for a limited user login and password. Training modules are required for those applicants who are not already a registered user in another Bankruptcy or Federal District Court.

(iii) Electronic Registration is available on the Court's Internet website ([www.rib.uscourts.gov](http://www.rib.uscourts.gov)).

(iv) Applicants must have a PACER login and password. A PACER login and password can be secured by contacting the PACER Service Center to establish an account. Registration may be made online at <http://pacer.psc.uscourts.gov>, or by calling the PACER Service Center at (800) 676-6856. PACER Access to the CM/ECF System will allow retrieval of the docket sheet and documents. PACER Access to the CM/ECF System will be on a "read only" basis.

**(B) Training.** After successful completion of the Court's training modules, or certification by the Clerk in circumstances where completion of the Court's training modules is not required, each Electronic Filer will receive a System password.

**(C) Passwords; Unauthorized Use Prohibited.**

(i) **Admission.** Admission to the System by receipt of a password from the Court constitutes a request for electronic service and notice pursuant to Fed. R. Bankr. P. 9036. By receiving a password, Electronic Filers agree to accept notice and service by electronic means, and registration as an Electronic Filer constitutes: (a) waiver of the right to receive notice by first class or certified mail and consent to receive notice electronically; and (b) waiver of the right to service by personal service, first class or certified mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004. Waiver of service and notice by first class or certified mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P. 9022.

(ii) **Password.** The password serves as the filer's signature. The password required to submit documents to the System serves as the Electronic Filer's original signature on all electronically filed documents. The password also serves as a signature for purposes of Fed. R. Bankr. P. 9011, other Federal Rules of Bankruptcy Procedure, the local rules of this Court, and any other purpose for which a signature is required in connection with proceedings before this Court. Electronically filed documents must include a signature block that sets forth the name, address, telephone number, and the attorney's bar registration number and e-mail address. In addition, the name of the Electronic Filer under whose log-in and password the document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear.

**(iii) Unauthorized Use of Passwords.** No Electronic Filer shall permit his/her password to be used by anyone other than himself/herself or an authorized employee. An Electronic Filer shall immediately notify the Clerk by telephone, facsimile, and e-mail if they learn that their password has been compromised. Electronic Filers may be subject to sanctions for failure to comply with this provision.

**(iv) Revocation.** The Court may revoke an Electronic Filer's password and, therefore, his or her authority and ability to electronically file documents for: (1) failure to comply with any provision of the agreement contained in the Electronic Filer's Registration Form; (2) failure to adequately protect his or her password; (3) failure to comply with the provisions of these Local Rules; (4) failure to pay fees required for documents filed electronically; (5) other misuse of the System; or (6) as a sanction ordered by the Court after notice and opportunity for hearing.

**(c) Exemption/Withdrawal From Electronic Filing.**

**(1) Attorney Exemption.** If filing electronically creates an undue hardship, an attorney may request permission to file documents conventionally. The request should be made to the Court and shall contain a detailed explanation of the reason(s) for the request. However, prior to requesting an exemption, attorneys are urged to register for a login and password and attempt to file after taking the online training modules and to seek assistance from the Clerk's Office. Information regarding ECF training and support may be obtained from the Clerk's Office and is also included on the Court's web site at: [www.rib.uscourts.gov](http://www.rib.uscourts.gov). If an exemption is granted, the attorney or his/her representative may be required to scan the filings into the system at a workstation at the Clerk's Office Intake counter. Upon the issuance of an order to show cause, notice, and hearing, the Court may withdraw an exemption and require the attorney to file documents electronically.

**(2) One Time Exemption.** An attorney who is not an Electronic Filer may conventionally file the first document on behalf of a client in an ECF case without leave of Court. Within twenty-one (21) days thereafter, the attorney must register as an Electronic Filer, or seek an exemption under subsection (1) above. Failure to register or seek an exemption may result in the issuance of an order to show cause why the attorney should not be sanctioned.

**(3) Attorneys Appearing Pro Hac Vice.** An attorney who is not a member of the bar of this Court, but who is permitted to appear and practice in this Court pursuant to R.I. LBR 9010-1 may, but is not required to, register as an Electronic Filer and to participate in the System for the duration of the Pro Hac Vice appearance.

**(4) Pro Se Litigants.** Pro se litigants may conventionally file and serve documents in accordance with the provisions of the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court.

**(5) Withdrawal.** Once registered, an attorney/participant may withdraw as an Electronic Filer by providing the Clerk with a request to withdraw, stating the reason(s) for the request. Copies of the request must also be served upon all registered attorneys/participants who have appeared in pending cases in which the withdrawing attorney/participant has appeared. Upon approval of said withdrawal, the Clerk will

immediately cancel the attorney/participant's password and will delete the attorney/participant from any applicable electronic service list. However, once an Electronic Filer withdraws from the system, he or she will be unable to file documents with the Court unless one of the exemptions listed above applies.

**(d) Format for Filing Electronic Documents.**

**(1) Format for Transmission of Electronic Documents.** All electronically filed documents must be submitted as a PDF file, and when viewed in the electronic filing system, shall conform in appearance to the requirements listed in [R.I. LBR 1005-1](#).

**(2) Attachments to Electronic Documents.** Multiple documents that are part of a pleading, which are filed at the same time by the same party may be electronically filed as a single document. Documents that are not a part of the pleading, e.g., memorandum of law, supporting affidavit, or appendix, shall be filed as an attachment to the pleading.

**(3) Designation of Electronic Documents.** Electronic Filers must designate a title for the document by selecting the appropriate event title from the categories provided in the System. Once a document is submitted and becomes part of the case docket, corrections to the docket are made only by the Clerk's Office, or after motion and approval by the Court.

**(e) Consequences of Electronic Filing.** Electronic transmission of a document to the CM/ECF system or the e-filing of an event on the System, together with the transmission of a Notice of Electronic Filing from the Court, constitutes filing of the document for all purposes under the Federal Rules of Bankruptcy Procedure and the local rules of this Court, and constitutes entry of the document or event on the docket kept by the Clerk under Fed. R. Bankr. P. 5003.

**(f) Time of Filing.** The System is "real-time", so the receipt of the Notice of Electronic Filing will show the actual date and time a document was filed on the System. Documents filed electronically outside of normal business hours will be deemed filed on the date and time received. Deadlines will not change as a result of this rule. The deadline for filing, unless otherwise specifically set, is 11:59 P.M. (E.S.T.)

**(g) Waiver of Notice and Service.** Registration with the Court as an Electronic Filer of the CM/ECF system will constitute:

**(1)** waiver of the right to receive notice by first class or certified mail and consent to receive notice electronically; and

**(2)** waiver of the right to service by personal service, first class or certified mail and consent to electronic service, except with regard to service of a summons and complaint under Fed. R. Bankr. P. 7004. Waiver of service and notice by first class or certified mail applies to notice of the entry of an order or judgment under Fed. R. Bankr. P. 9022.

**(h) Service of Documents by Electronic Means.** Each Electronic Filer of the CM/ECF system who electronically files a pleading or other document will automatically receive a "Notice of Electronic Filing" generated by the System and this Notice of Electronic Filing will automatically be transmitted by the System to all parties who are registered users of the System. Electronic transmission by the Court of the "Notice of Electronic Filing" generated by the CM/ECF System will constitute service or notice of the filed document. Parties having been excepted from the requirement to file and receive documents electronically are entitled to receive a paper copy of any electronically filed pleading or other document, and service or notice by the Electronic Filer must be made in accordance with the Federal Rules of Bankruptcy Procedure and these local rules.

**(i) Official Court Record.** The Case Management/Electronic Case Filing System (CM/ECF) shall constitute the official Court record in electronic form. The electronic filing of a pleading or other paper in accordance with the CM/ECF System procedures, or the conventional filing of a document which is subsequently imaged by the Court and placed into the System, shall constitute entry of that pleading or other papers on the docket kept by the Clerk pursuant to Fed. R. Bankr. P. 5003. The Court will not maintain paper except for the following:

(1) Documents filed under seal;

(2) Conventionally filed petitions, lists, schedules, statements, amendments, pleadings, affidavits, and other documents which contain original signatures;

(3) Official Bankruptcy Form B-21; and

(4) Conventionally filed handwritten documents

**(j) Original Signatures**

Petitions, lists, schedules, statements, amendments, pleadings, affidavits, stipulations and other documents which must contain original signatures, documents requiring verification under FRBP 1008, and unsworn declarations under 28 U.S.C. § 1746, shall be filed electronically and bear "electronic signatures", including the /s/. The Electronic Filer shall retain the original documents containing the original signatures for two (2) years after the case is closed. The Electronic Filer must produce all such original documents for review or filing at the request of a party in interest or upon order of the Court.

**(k) Consent Motions/Joint Motions**

(1) The following procedure shall be used in the case of joint or consent motions.

(A) The Electronic Filer shall initially confirm that the content of the document is acceptable to all parties intending to be bound and that all parties consent to the relief requested; and

(B) The Electronic Filer shall then file the document electronically, indicating his/her signature, e.g. "/s/ Jane Doe", "/s/ John Doe," etc

(2) The following procedure shall be used in all other instances requiring consent orders and/or stipulations where two or more signatures are required, including, but not limited to Joint Pre-Trial Orders:

(A) The Electronic Filer shall initially confirm that the content of the document is acceptable to all persons required to sign the document, and shall have in his or her possession the original signatures of all parties to the document.

(B) The Electronic Filer shall then file the document electronically, indicating the signatories, e.g., "/s/ Jane Doe," "/s/ John Doe," etc.

(C) The Electronic Filer shall retain the original documents containing the original signatures for two years after the case is closed.

#### **(l) Exhibits**

(1) **Exhibits.** Exhibits filed under Local Bankruptcy Rules, including but not limited to leases, notes, and the like, which are not available in electronic form, shall be submitted to the Court in paper format. The Clerk will indicate on the electronic docket the date such exhibits were submitted and, if appropriate, link them to the Joint Pre-Trial Order. Trial exhibits will not be scanned unless the Court orders otherwise.

(2) **Exhibits to Proofs of Claim.** Exhibits in support of a proof of claim shall be filed electronically whenever possible and shall be e-filed as one event with the proof of claim. The exhibits should be electronically imaged (i.e., scanned) and filed in PDF format as an attachment to the proof of claim.

#### **(m) Orders**

##### **(1) Proposed Orders**

(A) Where an Electronic Filer is required to submit a proposed order under R.I. LBR 9072-1, said document shall be electronically filed, docketed, and served in accordance with these procedures and Rule 9072-1.

(B) An Electronic Filer wishing to submit a proposed order before hearing may file such order together with the underlying motion or application, and e-filed as one event. The proposed order should be attached to the underlying motion or application.

(2) **Consent Orders/Reaffirmation Agreements.** Consent orders or reaffirmation agreements shall be filed in accordance with subsection R.I. LBR 5005-4(k).

##### **(3) Notice of Entry of Orders and Judgments by the Court**

(A) Upon the entry of an order or judgment in an action pending in the CM/ECF System, the System will automatically generate to all Electronic Filers in the case, in electronic form, a Notice of Electronic Filing. Transmission of the Notice of Electronic Filing constitutes the notice required by Fed. R. Bankr. P. 9022. The Clerk shall give conventional notice to persons who have not consented to electronic service.

(B) Orders signed electronically (i.e., ”/s/”) shall have the same force and effect as conventionally signed orders.

**(n) Emergency Filings and Requests for Continuance**

**(1) Procedure for Emergency Filings.** Electronic Filers requesting emergency hearing and/or relief shall contact the Clerk’s Office by telephone at (401) 626-3100, forthwith upon the filing of such motion. Failure to notify the Clerk’s Office of such filing as aforesaid, may result in denial of the request for expedited or emergency relief, or a delay in action on the motion.

**(2)** Jointly filed motions for continuance, proposed consent orders, and similar filings that affect a matter scheduled for hearing must be filed by 3:00 p.m. the day before the scheduled hearing, or the matter will remain on the calendar and all counsel will be required to attend the hearing. If an Electronic Filer files a document that affects a matter on the calendar after 3:00 p.m. the day before a scheduled hearing, the Electronic Filer shall also notify the Courtroom Deputy of such filing by e-mail at: RIBCourtroom@rib.uscourts.gov.

**(o) System Failure.** If electronic filing cannot be accomplished because of a court or filer System failure, the Electronic Filer shall, after making at least two attempts to file electronically, send the document and/or event as an attachment in PDF format via e-mail to the following address: RIBECFSupport@rib.uscourts.gov explaining why it was not possible to file directly in the CM/ECF System. The Electronic Filer must call the Clerk’s office prior to 10:00 a.m. of the next business day to advise that a document has been filed via e-mail. The Clerk’s office will download and file the PDF document, which will be deemed filed on the date and time of the e-mail transmittal.

**(p) Fees Payable to the Clerk.** All filing fees must be paid electronically by the Electronic Filer using the following methods: credit card, debit card or by ACH withdrawal from a registered bank account in the name of the attorney for the debtor, or the law firm of which the attorney for the debtor is a member, partner or associate. Payment of the filing fee is due on the date the document is filed. Failure to make payment on the date of the filing may cause the Electronic Filer to be locked out of the System.

**(q) Public Access to Court documents.** Electronic access at the Clerk’s Office is available to the public during regular business hours for viewing the docket sheet and documents filed in the System. Conventional and certified copies of electronically filed documents may be purchased at the Clerk’s Office during regular business hours or by mail with a check, money order, credit or debit card for the exact amount of the purchase, unless otherwise authorized.

## **RULE 5079-1 FEES - FORM OF PAYMENT [Modified 10/3/11]**

**Manner of Payment.** The fees prescribed in the Miscellaneous Fee Schedule shall be paid in cash, by cashier's check or money order, made payable to "Clerk, U.S. Bankruptcy Court." Payment by personal check, credit card, or debit card will be accepted, except from current debtors, unless a debtor in possession under Chapter 11. The applicable miscellaneous fee shall be assessed and shall be payable to the "Clerk, U.S. Bankruptcy Court" for any dishonored check. The Clerk of the court shall maintain a list of persons or businesses whose checks have been dishonored, may refuse to accept the checks of such persons or businesses, and, if circumstances warrant, may report the person or business to the appropriate authorities.

## **RULE 9014-1 CONTESTED MATTERS [Modified 10/3/11]**

**(a) Rule 9013 Governs Procedure.** In any contested matter, motion practice shall be governed by R.I. LBR 9013-1 and 9013-2.

**(b) Rule 7026 Shall Not Apply.** Federal Rule of Bankruptcy Procedure 7026 shall not apply to contested matters governed by Rule 9014, unless otherwise ordered by the court.

**(c) Service and Certificate of Service.** Unless another manner of service is ordered by the Court, the movant shall serve the motion by mail in the manner provided by Fed. R. Bankr. P. 7004. The movant shall file with the Clerk a certificate of service which complies with R.I. LBR 9013-3.

**(d) Duty to File Joint Pretrial Order.** Where the Court determines that the filing of a Joint Pretrial Order will facilitate and expedite the hearing of a contested matter, the parties will be directed to file a Joint Pretrial Order within the time established by the Court, and in accordance with the requirements set forth in paragraphs (1) and (2) below and in the form described in R.I. Bankr. Form O.

**(1) Initial Draft by Plaintiff/Movant.** In all instances that require the filing of a Joint Pretrial Order, it is the plaintiff/movant's responsibility to prepare the initial draft of the Joint Pretrial Order and to serve it on opposing counsel at least four business days before the order is due in the Clerk's office. The opposing party must submit to the movant any comments or revisions within two (2) days, to finalize the Order. If either party fails to perform as required herein, the aggrieved party shall file a one-sided joint pre-trial order, along with an affidavit stating the facts which constitute the failure to cooperate.

**(2) Affidavit of Noncompliance.** Upon consideration of an affidavit filed in accordance with paragraph (1) above and any response thereto, the Court may order that the motion or adversary proceeding proceed as a defaulted matter:

**(A)** When a matter brought by a plaintiff/movant is in default as to the filing of the Joint Pretrial Order or any of the requirements specified therein, the Clerk shall

dismiss the matter for want of diligent prosecution. The party in default may have the matter reinstated only upon showing special circumstances, by motion, filed within fourteen (14) days of the dismissal.

(B) When a matter is in default by the defendant/respondent as to the filing of a Joint Pretrial Order or any of the requirements specified therein, the defendant/respondent will not be allowed to present its defense at trial, except by leave of court, for cause shown.

**(e) Duty to Confer Prior to Evidentiary Hearing.** Prior to commencement of an evidentiary hearing on a contested matter, counsel shall confer in a good faith effort to resolve the dispute, and must represent that they have so conferred (unsuccessfully), prior to the presentation of evidence. The plaintiff, the movant or the party objecting to a claim shall initiate the settlement conference.

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF RHODE ISLAND

**FIFTH AMENDED 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 consensual resolution when a debtor's residential property is at risk of foreclosure. The LMP aims to facilitate such resolution by opening communications between the debtors' and lenders' decision-makers. While the LMP stays certain bankruptcy deadlines that may delay the normal progress of bankruptcy administration, more importantly, the LMP encourages the parties to finalize a feasible and beneficial agreement under Bankruptcy Court protection, instead of seeking dismissal of the bankruptcy case.

**II. LOSS MITIGATION DEFINED**

The "loss mitigation" process is intended to include 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 commonly consists of several general types of agreements, or a combination of them: loan modification, loan refinance, forbearance, short sale, or surrender of the property in full satisfaction.<sup>1</sup> 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:

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<sup>1</sup> This is not intended to be an exclusive list of loss mitigation solutions.

## **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. If the Debtor is represented by counsel, the term “Debtor” is to be interpreted to include both the Debtor and the Debtor’s attorney, unless the Debtor, with the approval of Debtor’s counsel, has expressly requested and authorized direct involvement without counsel. The fact that a discharge has entered or that relief from stay has been granted does not prevent a Debtor from requesting Loss Mitigation or prevent the Court from entering a Loss Mitigation Order. However, neither do these actions prevent such Creditors from pursuing their state court rights during the Loss Mitigation period, if they so elect.

## **B. PROPERTY**

The term “Property” means any real property used as the principal residence of an eligible Debtor in which that 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 necessary or desirable to obtain a global (i.e., more than a two party) resolution, any party may request, or the bankruptcy court may direct that multiple Creditors participate in the loss mitigation process.

## **B. CO-DEBTORS AND THIRD PARTIES**

Where the participation of a co-debtor or other third party is 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 such participation.

### **C. CHAPTER 13 TRUSTEE**

It is the duty of the Chapter 13 Trustee under 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 duties under the Bankruptcy Code.

### **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 Section XIII of the Model Chapter 13 Plan (RI Local Form W.1), a Chapter 13 Debtor may indicate an interest in discussing loss mitigation with a particular Creditor. If the box in Section XIII is checked, within seven (7) days of filing the Plan, the Debtor shall serve on the Creditor and its counsel, if known, and file with the Court, a Notice and/or Request for Loss Mitigation (2<sup>nd</sup> Amended Form A) The Creditor shall have fourteen (14) days to object. If no objection is filed, the Bankruptcy Court may enter a Loss Mitigation Order setting forth the applicable deadlines for the loss mitigation process.

2. Alternatively, a Debtor may file with the Court and serve on the Creditor and its counsel, if known, a Notice and/or Request for Loss Mitigation (2<sup>nd</sup> Amended Form A), The Creditor shall have fourteen (14) days to object. If no objection is filed, the Bankruptcy Court may enter a Loss Mitigation Order setting forth the applicable deadlines for the loss mitigation process. Only one creditor/property may be included on a Request form. Use separate forms for additional creditors (liens).

3. If a Creditor has filed a motion for relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code (a “Lift-Stay Motion”), at any time prior to the conclusion of the hearing on the Lift-Stay Motion, the Debtor may file a Notice and/or Request for Loss Mitigation (2<sup>nd</sup> Amended Form A). The Debtor and Creditor shall appear at the scheduled hearing on the Lift-Stay Motion, at which time the Bankruptcy Court will consider the loss mitigation request and any opposition by the Creditor. If the objection deadline in the Loss Mitigation Request expires before the scheduled hearing and no objection is filed, the matter will be automatically removed from the calendar and the parties will be so notified and all pending matters will be continued.

#### **B. BY A CREDITOR**

A Creditor may file with the Court and serve on the Debtor and Debtor’s counsel, if any, a Request for Loss Mitigation (Amended Form B). The Debtor shall have seven (7) days to object. If no objection is filed, the Bankruptcy Court may enter a Loss Mitigation Order setting forth the applicable deadlines for the loss mitigation process.

#### **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 (the “Loss Mitigation Parties”) have had notice and opportunity to object and be heard.

#### **D. OPPORTUNITY TO OBJECT**

Where any party files an objection, a 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 reasons why loss mitigation would not be successful. If a party objects on the ground that loss mitigation has been requested in bad faith, the assertion must be supported by objective reasons, and/or by sworn testimony.

This Court’s LMP is intended to bring debtors and secured lenders together, hopefully, to reach consensual and mutually beneficial resolutions when residential property is at risk of foreclosure. With this in mind, and consistent with the federal HAMP eligibility requirements – that homeowners must be in default or at imminent risk of default, the requirement that debtors make regular mortgage payments during the loss mitigation process will not be automatically imposed as a condition to participation in the LMP. To do so would likely be fatal to the viability of most of the federal, state and municipal programs that have been developed in response to the residential foreclosure crisis.

To give the Rhode Island Bankruptcy Court Program the best chance of success, parties are advised that objections to Loss Mitigation participation shall be filed by the applicable deadline and must contain specific reasons as to why the secured lender believes that loss mitigation would not be successful.

## **VI. LOSS MITIGATION ORDER**

### **A. DEADLINES**

A Loss Mitigation Order shall contain deadlines for the following:

1. The date by which the Loss Mitigation Parties shall designate contact persons and disclose contact information, if this information has not been previously provided.
2. The date by which each Creditor must initially contact the Debtor.
3. The date by which each Creditor must transmit information requests to the Debtor.
4. The date by which the Debtor must transmit information requests to each Creditor.
5. The date by which a written report must be filed updating the Court on the status of the loss mitigation.
6. The date when the loss mitigation period will terminate, unless duly extended.

### **B. EFFECT**

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

1. Any Lift-Stay Motion filed by such LM Party Creditor prior to or after the entry of the Loss Mitigation Order shall be postponed to a date after the last day of the loss mitigation period, and the stay shall be extended pursuant to Section 362(e) of the Bankruptcy Code. If, however, it appears that such motions are being filed during the LM period primarily to drive up costs to debtors, particularly when a consensual loan modification is in progress, the Court will consider, on a case by case basis, whether such fees and costs are appropriate. If the debtor fails to cooperate in the LM process, the creditor may move to terminate the loss mitigation order, and if granted, an expedited hearing on any pending relief from stay motion will be scheduled.
2. In a chapter 7 case, if the Loss Mitigation period is anticipated to continue more than 80 days from the date the chapter 7 petition was filed, debtors may seek to extend the entry of discharge pursuant to Fed.R.Bankr.P. 4004(c)(2), in order that the automatic stay not expire under 11 U.S.C. § 362(c)(2)(C).
3. In Chapter 13 cases, the hearing date for confirmation of the plan shall be continued to a date after the last day of the loss mitigation period. The deadline by which a Creditor must object to confirmation shall be governed by local rules 3015-2(c)(3) and/or

3015-3(b)(2), as applicable, and calculated from the rescheduled confirmation date.

4. During the Loss Mitigation period, Debtors must stay current with their Chapter 13 plan payments in order to remain eligible for the program.
5. 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 failing or refusing to participate in loss mitigation in good faith may be subject to sanctions. At any time during the Loss Mitigation Period, a party seeking compliance with deadlines should file a Motion to Compel compliance with the Loss Mitigation Order or seek termination of the Loss Mitigation Order, if appropriate. If a party, instead, chooses to file a proposed Order to Show Cause, said proposed order must be accompanied by an affidavit verifying the facts asserted in the Order to Show Cause.

### **B. CONTACT INFORMATION**

1. The Debtor: The Debtor shall provide written notice to each Creditor, indicating the manner in which the Creditor should contact the Debtor, unless the Debtor has already done so in the Chapter 13 plan or as part of a request for loss mitigation.
2. The Creditor: Each Creditor shall provide written notice to the Debtor, identifying the name, address, and direct telephone number of the contact person with settlement authority, unless a Creditor has already done so as part of a prior request for loss mitigation.

### **C. STATUS REPORT**

The Loss Mitigation Parties shall provide a written report to the Bankruptcy Court regarding the status of the loss mitigation, within the time set by the Bankruptcy Court in the Loss Mitigation Order. The Debtor shall be responsible for preparing the initial draft of the Status Report and to forward it to counsel for the LM Creditor at least four (4) business days before the status report is due. The LM Creditor shall submit to the Debtor any revisions to the report at least one (1) day before it is due. If the Debtor is unable to

locate a representative for the LM Creditor or is unsuccessful in obtaining a joint status report with the LM Creditor, the Debtor may unilaterally file a and shall certify within the status report event that attempts to obtain a joint report were unsuccessful. Single sided status reports will be given a 17 day objection period before action is taken by the court. If either party fails to comply with the above requirements, a motion to compel compliance or a motion to terminate loss mitigation may be filed, as appropriate. The status report shall include whether one or more loss mitigation sessions have been conducted, whether a resolution was reached, and whether one or more of the Loss Mitigation Parties believe that additional loss mitigation sessions would be likely to result in either a partial or complete resolution. A status report may include a request for an extension of the loss mitigation period. If the parties jointly continue the status reporting date, the Loss Mitigation period will automatically be extended to that date, unless the Court orders otherwise. Where multiple extensions of time are requested without sufficient explanation for the delay, a hearing will be scheduled.

If the Loss Mitigation Parties are using the DMM Portal (as provided for in Section VIII E), the Loss Mitigation Parties may use the transactional history report which is available through the DMM Portal as the status report.

#### **D. BANKRUPTCY COURT APPROVAL**

The Loss Mitigation Parties shall file a written request for Bankruptcy Court approval of any resolution or settlement reached during the loss mitigation process. See also Section X infra.

### **VIII. THE LOSS MITIGATION PROCESS**

#### **A. INITIAL CONTACT**

Within seven (7) days after entry of a Loss Mitigation Order, unless a different deadline is set by the Court, the contact person designated by each Creditor shall contact the Debtor's attorney, or Debtor, if specifically authorized, and any other Loss Mitigation Party. The Debtor may contact any Loss Mitigation Party at any time. The purpose of the initial 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. During the initial contact phase, the Loss Mitigation Parties should agree upon:

1. The time, place and method for conducting the loss mitigation sessions.
2. The types of loss mitigation solutions under consideration by each party.
3. A plan for the exchange of requested information prior to the loss mitigation session, including the due date for the Debtor to complete and return any information request or

other loss mitigation paperwork that each Creditor may require. All such information shall be provided at least 7 days prior to the loss mitigation session.

## **B. LOSS MITIGATION SESSIONS**

Loss mitigation sessions may be conducted in person, via the DMM Portal, telephonically, or via 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 Bankruptcy Court, on any subject dealing with the Loss Mitigation process.

## **D. SETTLEMENT AUTHORITY**

Each Loss Mitigation Party must have a designated person with full settlement authority present during the loss mitigation session. During a status conference or settlement conference with the Bankruptcy Court, a person with full settlement authority must either attend the conference in person or be available by telephone or video conference 30 minutes prior to the start of the conference.

## **E. DMM 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 lenders from communicating effectively. In an effort to resolve these communication issues, several lenders have made available a secure online portal that is designed to facilitate the communication and document exchange between debtor and lender (such portal is referred to as the "DMM Portal"). The DMM Portal also provides 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.

Having implemented the DMM Portal, DMM Portal Lenders have expressed a desire to have all loss mitigation requests processed through the DMM Portal to ensure that there is a single, well-defined process. The Court believes that the DMM Portal is a valuable tool and agrees that a single point of contact would be advantageous in streamlining the loss mitigation process.

Accordingly, when a debtor's attorney submits a loss mitigation request to a Creditor that is a DMM Portal Lender (a list of which is maintained on the Court's website), debtor's attorney shall use the DMM Portal to engage the DMM Portal Lender

in the loss mitigation process by submitting the Loss Mitigation Order together with all of the DMM Portal Lender's required forms and documents through the DMM Portal. A complete list of all of the DMM Portal Lender's required forms and documents is available on the DMM Portal. Debtor's attorney will also continue to use the DMM Portal to communicate with the DMM Portal Lender to the extent possible regarding the loss mitigation request. Use of the DMM Portal will be free to debtors and their attorneys. If use of the DMM Portal creates an undue hardship, an attorney may request permission to exchange documents and communications conventionally with the DMM Portal Lender. Such request should be made by motion filed with the Court and shall specify why the use of the DMM Portal creates such an undue hardship.

Free training on the DMM Portal is available to all debtors' attorneys. Debtors' attorneys should refer to the Court's website page on loss mitigation for DMM Portal training materials including a web portal attorney manual and contact information if webex training is desired.

Because Pro Se filers may not have access to a computer and thus, may be unable to use the DMM Portal, Pro Se filers may submit their loss mitigation packages outside of the DMM Portal even if the lender is a DMM Portal Lender.

## **IX. DURATION, EXTENSION AND EARLY TERMINATION**

### **A. INITIAL PERIOD**

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

### **B. EXTENSION**

1. Agreement: The Loss Mitigation Parties may agree to an extension of the loss mitigation period, not to exceed 90 days, by filing a request for extension in writing on the docket in the main bankruptcy case and served on all parties in interest. Any objection to such request for additional time 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 (1) a further loss mitigation session is likely to provide a substantial benefit to a Loss Mitigation Party, (2) the party opposing the extension has not participated in good faith or has failed in a material way to comply with these Procedures, (3) the party opposing the extension would not be prejudiced, or (4) 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 Bankruptcy Court may schedule a hearing to consider said request.
2. Dismissal of the Bankruptcy Case:
  - a. Other than at the request of a Chapter 13 Debtor, or on the motion of the United States Trustee, the case trustee, or the Court acting sua sponte, for failure to comply with requirements under the Bankruptcy Code, a case shall not be dismissed during the loss mitigation period unless the Loss Mitigation Parties have provided the Bankruptcy Court with an explanatory status report that is approved by the Court.
  - b. Upon the request of a Chapter 13 Debtor: **A Debtor shall not be required to request dismissal of the bankruptcy case as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.** Where a Chapter 13 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.
  - c. Notice: If a bankruptcy case is dismissed for any reason during the loss mitigation period, the Clerk of the Court shall note on the docket that loss mitigation efforts were ongoing at the time the bankruptcy case was dismissed.

### **X. RESOLUTIONS**

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

1. Implementation: 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. All settlement agreements that result in loan modifications must be accompanied by a completed and signed Form D, Proposed Loan Modification Agreements.
2. 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 Settlement.

3. 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.
4. 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.
5. Amended Schedules I and J and Amended Plan, if applicable:  
Within fourteen (14) days after Court approval of a loss mitigation Resolution, the Debtor shall file amended Schedules I and J, and an amended Chapter 13 plan, if applicable.
6. Dismissal Not Required: **A Debtor is not required to request dismissal of the bankruptcy case in order to effectuate a Resolution.** To ensure that a **Resolution** is enforceable, the Loss Mitigation Parties must request Bankruptcy Court approval. Where the Debtor requests or consents to dismissal of the bankruptcy case as part of the Resolution, the Bankruptcy Court may approve the agreement as a "structured dismissal," if such action complies with the Bankruptcy Code and the Bankruptcy Rules, and does substantial justice between the parties.

## **XI. COORDINATION WITH OTHER PROGRAMS**

*[Provision may be added in the future to provide for coordination with other loss mitigation programs.]*

## **XII. EFFECTIVE DATE**

Pursuant to General Order 09-003, the Court's LMP first became effective on November 1, 2009. By General Order 10-001, the Court issued its First Amended LMP, which took effect on January 15, 2010, on April 1, 2010, by General Order 10-002, the Second Amended LMP went into effect, on August 23, 2010, by General Order 10-003, the Third Amended LMP took effect, and on February 14, 2011, by General Order 11-001, the Fourth Amended LMP took effect. On October 3, 2011, the Fifth Amended LMP will take effect, amending various sections as well as Form C.

- - - - -x

In re: :BK No.  
Chapter  
:

Debtor(s)  
- - - - -x

**LOSS MITIGATION ORDER**

A Loss Mitigation Request<sup>1</sup> was filed by the Debtor on \_\_\_\_\_  
\_\_\_\_\_ 2011.

A Loss Mitigation Request was filed by a creditor on \_\_\_\_\_  
\_\_\_\_\_, 2011.

The Court raised the possibility of loss mitigation, and the parties have had notice and an opportunity to object.

The Creditor has subscribed to the DMM Portal (such Creditor will be referred to herein as a "DMM Portal Creditor").

Debtor  is represented by counsel (such counsel will be referred to herein as the "Debtor's Attorney").

is not represented by counsel.

Accordingly, it is **ORDERED**, that the following parties (collectively, the "Loss Mitigation Parties") are directed to participate in loss mitigation:

1. The Debtor

2. \_\_\_\_\_, the Creditor with respect to

\_\_\_\_\_

\_\_\_\_\_ [describe Loan and/or Property].

3.

\_\_\_\_\_

<sup>1</sup> All capitalized terms have the meanings defined in the section on Loss Mitigation Procedures.

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*[Additional parties, if any.]*

It is further **ORDERED**, that the Loss Mitigation Parties shall comply with the Loss Mitigation Procedures adopted by this Court; and it is further

**ORDERED**, that the Loss Mitigation Parties shall observe the following deadlines:

1. Each Loss Mitigation Party shall designate contact persons and disclose contact information within 7 days of the date of this Order, unless this information has been previously provided. As part of this obligation, **a creditor shall furnish each Loss Mitigation Party with written notice of the name, address, and direct telephone number of the person who has full settlement authority, and shall file such Loss Mitigation Contact Information with the Court.**
2. Each Creditor that is a Loss Mitigation Party shall contact the Debtor's Attorney, or Debtor, if pro se, within **fourteen (14) days of the date of this Order.**

DMM Portal Creditor: If the Creditor is a DMM Portal Creditor and the Debtor is represented by counsel, DMM Portal Creditor shall be deemed to have complied with the foregoing by virtue of the DMM Portal Creditor making itself available through the DMM Portal.

3. Each Loss Mitigation Party must make its information request, if any, within fourteen (14) days of the date of this Order.

DMM Portal Creditor: If the Creditor is a DMM Portal Creditor and the Debtor is represented by counsel, DMM Portal Creditor shall be deemed to have made its initial information request on the date of this Order by virtue of the DMM Portal Creditor making its loss mitigation requirements available through the DMM Portal. Any subsequent requests for information by Debtor's Attorney or DMM Portal Creditor shall be made through the DMM Portal.

4. Each Loss Mitigation Party shall respond to an information request within **fourteen (14) days after such request is made, or seven (7) days prior to the Loss Mitigation Session, whichever is earlier.**

DMM Portal Creditor: If the Creditor is a DMM Portal Creditor and the Debtor is represented by counsel, Debtor's Attorney and DMM Portal Creditor shall provide all responses through the DMM Portal, including, without limitation, the submission by Debtor's Attorney of the DMM Portal Creditor's required documents and forms which are posted on the DMM Portal, which submission shall be made within fourteen (14) days after the date of this Order.

5. The Loss Mitigation Session shall be conducted not later than 45 days from the date of the Order.
6. A Loss Mitigation status report shall be filed with the Court **within 60 days of the date of this order**. If additional time is required to complete the loss mitigation process, the parties shall include a request for additional time within said status report.
7. The Loss Mitigation Parties may agree to an extension of the loss mitigation period, **not to exceed 90 days**, by filing a request for extension in writing on the docket in the main bankruptcy case and served on all parties in interest. Any objection to such request for additional time shall be filed **within three (3) days**.
8. The loss mitigation period shall terminate 90 days from the date of the Order unless extended as provided in the Loss Mitigation Procedures.

It is further **ORDERED**, that any other pending matters between the Loss Mitigation Parties are hereby continued to a date after the last day of the loss mitigation period, to the extent those matters concern (1) relief from the automatic stay, (2) objection to the allowance of a proof of claim, (3) reduction, reclassification or avoidance of a lien, (4) valuation of a Loan or Property, or (5) objection to confirmation of a plan of reorganization; and it is further

**ORDERED**, that the time for each Loss Mitigation Creditor to file an objection to a plan of reorganization in this case shall be governed by Local Rules 3015-2(c)(3) and/or 3015-3(b)(2) as applicable, calculated from the rescheduled confirmation date.

Entered as an Order of this Court.

Dated at Providence, Rhode Island, this \_\_\_\_\_ day of  
\_\_\_\_\_.

Arthur N. Votolato  
U.S. Bankruptcy Judge  
Entered on docket:

Rev. 10/3/11

**AMENDMENTS TO THE RHODE ISLAND BANKRUPTCY COURT'S  
LOCAL FORM**

**EFFECTIVE DECEMBER 1, 2011**

**CLEAN COPY**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF RHODE ISLAND

IN RE: CHAPTER 13  
CASE NO.

Debtor(s)

CHAPTER 13 PLAN AND APPLICABLE MOTIONS DESIGNATED BELOW:

CLAIM(S)  MOTION TO AVOID LIEN(S)  
 MOTION TO MODIFY SECURED  
 MOTION TO ASSUME/REJECT LEASE(S)

**If you oppose any provision of this plan and/or any motions contained within, you MUST FILE A TIMELY WRITTEN OBJECTION. This plan and any motions contained within may be confirmed and become binding on you without further notice or hearing unless a written objection is filed no later than seven (7) days before the hearing date on confirmation, which is scheduled for**

Your objection to confirmation must include the specific reasons for your objection, and must be filed with the Court no later than seven (7) days before the hearing date on confirmation. See LBR 3015-3(b)(1). If you mail your objection to confirmation to the Court for filing, you must mail it early enough so that the Court will receive it on or before the deadline stated above. You must also serve a copy of your objection to confirmation on the debtor(s), the attorney for the debtor(s), and the Chapter 13 trustee at their addresses as they are listed in the notice of the meeting of creditors. See LBR 3015-2(c)(3).

**If you or your attorney do not take these steps, the Court may decide that you do not oppose the proposed plan of the debtor(s), including any motions contained in the plan, and may enter an order confirming the plan and granting the motions. Any creditor's failure to object to confirmation of the proposed plan or any of the above checked motions shall constitute the creditor's acceptance of the treatment of its claim as proposed, pursuant to 11 U.S.C. Section 1325(a)(5)(A).**

**PLAN PROVISIONS**

**DISCHARGE: (Check one)**

- ( ) The debtor will seek a discharge of debts pursuant to Section 1328(a).
- ( ) The debtor is not eligible for a discharge of debts because the debtor has previously received a discharge described in Section 1328(f).

**NOTICE OF SPECIAL PROVISIONS: (Check if applicable)**

- ( ) This plan contains special provisions that are not included in the standard plan as approved by the U.S. Bankruptcy Court for the District of Rhode Island. Those provisions are set out in the OTHER PLAN PROVISIONS section of this plan.

**I. PLAN PAYMENTS**

**A.** Payments by the debtor of \$ \_\_\_\_\_ per month for \_\_\_\_\_ months. Pursuant to 11 U.S.C. § 1326(a)(1), unless the Court orders otherwise, the debtor shall commence making payments not later than 30 (thirty) days after the date of the filing of the plan or the order for relief, whichever is earlier.

**B.**In addition to the above specified plan payments, other lump sum payments from any source (describe specifically) shall be paid to the trustee as follows:

**C. For amended plans:**

(1) The plan payments by the debtor shall consist of the total amount previously paid (\$\_\_\_\_\_) added to the new monthly payment in the amount of \$ \_\_\_\_\_ for the remaining \_\_\_\_\_ months of the plan for a total base amount, as amended, of \$\_\_\_\_\_, plus other payments and property stated in Paragraph B above.

(2) The payment amount shall change effective \_\_\_\_\_.

**D.** Payments to the trustee shall be sent to the following address:

Office of the Standing Chapter 13 Trustee  
P.O. Box 2561  
Providence, Rhode Island 02906

**II. ADMINISTRATIVE COSTS**

**A.** Attorney’s Fees. The attorney for the debtor(s) has received \$\_\_\_\_\_ of the total initial attorney fee of \$\_\_\_\_\_. The remainder of the initial fee shall be paid through the plan.

The attorney for the debtor(s) requests additional payment in the amount of \$for representing the debtor in the Court’s loss mitigation program, or a loss mitigation program outside of the Court. This fee will be paid through the plan.

Therefore, the total attorney fee to be received in this case will be \$\_\_\_\_\_.

Trustee’s Costs. The trustee shall be entitled to reimbursement of fees and costs up to the statutory maximum on each disbursement made by the trustee, regardless of whether it is paid prior to or following confirmation.

**III. FILING OF PROOFS OF CLAIM**

**A.** The trustee shall only distribute payments, including adequate protection payments, to creditors who have actually filed proofs of claim (including adequate proof of security) with the Court that are deemed allowed pursuant to 11 U.S.C. Section 502(a), except as set forth in Section IV B(1) below.

- B.** The trustee shall mail payments and provide notices to the address provided on the filed proof of claim or amended proof of claim or filed name or address change or assignment or transfer of claim filed with the Court.

**IV. SECURED CLAIMS**

- A. Mortgages and Other Direct Payments by Debtor.** Payments will be made outside the plan according to the original contract terms, with no modification of contract terms and with liens retained.

<b>Name of Creditor</b>	<b>Description of Collateral</b>	<b>Contractual Monthly Payments</b>	<b>Principal Balance of Claim</b>	<b>Contract Rate of Interest</b>
		\$	\$	%
		\$	\$	%
		\$	\$	%
		\$	\$	%

**B. Prepetition Arrearages.**

(1) For purposes of this Plan, Prepetition Arrearages shall include all sums included in the allowed claim and shall have a “0” balance upon entry of the Discharge Order in this case. In the event that a Secured Creditor listed in this section fails to timely file a proof of claim in this case, by this Plan the Debtor shall be deemed to have timely filed a proof of claim on behalf of each such Secured Creditor pursuant to 11 U.S.C. § 501(c), in the amount set forth below in paragraph (4) below.

(2) No interest will be paid on Prepetition Arrearages unless otherwise stated.

(3) Payments made by the Trustee on Debtor’s Prepetition Arrearages shall be applied **only** to those Prepetition Arrearages and not to any other amount owed by Debtor to the Secured Creditor.

(4) Information Regarding the Arrearages:

<b>Secured Creditor</b>	<b>Description of Collateral Including Address</b>	<b>Arrearage Amount</b>	<b>Total to be paid in Plan</b>
	\$	\$	\$
	\$		

(5) If Debtor pays the amount(s) specified in section (4) (above), while making all required Post-Petition Payments (see below), Debtor’s mortgage will be reinstated according to its original terms, extinguishing any right of the Secured Creditor to recover any amount alleged to have arisen prior to the filing of Debtor’s petition.

**Check if applicable:**

**Motion to Modify Secured Claims**

The debtor(s) hereby moves the Court to value the collateral of each of the creditors described in Section C below (except those creditors whose claims are classified to be paid directly or to be paid in full by the Chapter 13 Trustee where Section 506(a) does not apply) at the collateral value stated. To the extent

that the amount of the debt of any such creditor exceeds the stated collateral value, the debtor(s) hereby moves the Court that said difference be treated in the Chapter 13 plan as a general unsecured claim without priority. The debtor(s) further moves the Court that the lien of each creditor listed upon the collateral listed herein above be satisfied upon payment of the collateral value and the issuance of the debtor(s) discharge.

**Pursuant to R.I. LBR 3015-1(c)(1), if the plan includes a motion to modify secured claim, the plan must be served on the lienholder by first class and certified mail.**

**C. Secured Claims Paid According to Modified Terms.** These amounts will be paid in the plan according to modified terms, and liens retained until entry of discharge. The excess of the creditor’s claim will be treated as an unsecured claim. Any claim listed as “NO VALUE” in the “Modified Principal Balance” column below will be treated as an unsecured claim. **THE LIENS WILL BE AVOIDED OR LIMITED IN THE PLAN OR AN ADVERSARY ACTION WILL BE FILED UNDER SECTION 506(a) TO DETERMINE THE EXTENT, VALIDITY, AND PRIORITY OF THE LIEN (Select method in last column):**

Name of Creditor	Description of Collateral including Address and whether a Primary Residence	Value of Collateral	Modified Principal Balance	Interest Rate	Total Plan Payments	Mortgage Position (1 <sup>st</sup> , 2 <sup>nd</sup> , 3 <sup>rd</sup> )	Is Appraisal attached to Plan?	Plan* or Adversary Action?
		\$	\$	%	\$			
		\$	\$	%	\$			
		\$	\$	%	\$			
		\$	\$	%	\$			

**\* PLAN INDICATES THAT THE DEBTOR PROPOSES TO AVOID OR LIMIT THE LIEN OF THE CREDITOR IN THIS PLAN. CONFIRMATION OF THE PLAN SHALL CONSTITUTE A FINDING OF VALUATION PURSUANT TO SECTION 506(a). NO ADVERSARY COMPLAINT OR FURTHER MOTION WILL BE FILED AND THE LIEN WILL BE AVOIDED. IF THE CREDITOR WISHES TO CONTEST THE AVOIDANCE OF THE LIEN, THE CREDITOR MUST FILE AN OBJECTION TO THE ABOVE MOTION TO MODIFY SECURED CLAIM AND THIS PLAN. OTHERWISE CONFIRMATION OF THE PLAN WILL AVOID THE LIEN.**

**D. Surrender of Collateral**

Name of Creditor	Description of Collateral to be Surrendered

Check if applicable:

[ ] **Motion to Avoid Judicial Liens**

Judgments were obtained by the creditors listed below in cases before the Rhode Island State Courts, and said judgments have been recorded in the Registry of Deeds in the respective city or town hall as follows:

<u>Creditor Amount And Page</u>	<u>Judgment Book</u>	<u>Registry</u>	<u>Judgment Date</u>	<u>Date of Recording</u>
---	----------------------	-----------------	----------------------	--------------------------

- 1.
- 2.

The above-stated judgments created liens on the real property in which the debtor(s) has an interest, which real property is more specifically described as \_\_\_\_\_. The value of the debtor(s)'s interest in this real property is \$\_\_\_\_\_. The aforesaid liens constitute judicial liens under 11 U.S.C. Section 522(f)(1). The property which this judicial lien encumbers is property which the debtor(s) is entitled to exempt under 11 U.S.C. Section 522 and the claimed amount of this exemption is \$\_\_\_\_\_. The existence of this judicial lien impairs the exemption to which the debtor(s) is entitled under R.I.G.L. 9-26-4 or as otherwise applied under applicable state law.

The debtor(s) respectfully moves the Court to issue an order avoiding the judicial liens upon the real property described herein, effective upon discharge.

**Pursuant to R.I. LBR 4003-2 if the plan includes a motion to avoid lien it must be served on the lienholder and lienholder's counsel.**

**E. Lien Avoidance.** The debtor moves to avoid the liens of the following creditors pursuant to Section 522(f):

<b>Name of Creditor</b>	<b>Description of Collateral</b>

**V. PRIORITY CLAIMS**

**PRIORITY CLAIMS.** All claims entitled to priority under 11 U.S.C. Section 507 and 1322 shall be paid in full in deferred cash payments, except for priority claims under Section 507(a)(1)(B), unless the holder of the particular claim agrees to a different treatment of such claim.

**A. Domestic Support Obligations ("DSOs")** All postpetition DSOs, including postpetition DSOs assigned to a governmental unit, will be paid directly to the holder by the debtor(s) or to the assignee of the claim and not through the Chapter 13 Trustee unless otherwise specified under the "Other Plan Provisions" section of the plan.

1. [ ] None
2. [ ] DSO applies.

**B. DSO Prepetition Arrearages** Owed to DSO Holders Under 11 U.S.C. Section 507(a)(1)(A), or assigned to a governmental unit, to be paid in full through the Chapter 13 plan.

1.  None

2. Name of holder Amount of Arrearage

(i)

(ii)

**C. Priority Claims Other Than DSOs.**

All priority claims other than DSOs shall be paid in full on a pro rata basis after the payment in full of all DSO priority claims.

(1)  None

(2) The names and amounts of all claims entitled to priority under 11 U.S.C. Section 507, other than DSOs:

Name Claim Amount

(i)

(ii)

**VI. UNSECURED CLAIMS**

**General Unsecured Claims Not Separately Classified.** General unsecured claims shall be paid on a pro rata basis with payments to commence after the payment of all administrative, secured and priority unsecured claims in full.

**A. Claims of Unsecured Nonpriority Creditors Specially Classified.** Includes unsecured claims, such as co-signed unsecured debts, that will be paid in full even though all other unsecured claims may not be paid in full.

Name of Creditor	Reason for Special Classification	Amount of Claim	Interest Rate	Total Payment

**B. Claims of General Unsecured Creditors.** The debtor estimates that a total of \$\_\_\_\_\_ will be available for distribution to unsecured creditors on a pro rata basis, which represents an estimated dividend of \_\_\_\_\_ % of their claims. This percentage is for calculation purposes only. The Plan provides for a specific set amount to be paid into the plan, not a percentage of the debt. The debtor calculates that a minimum of \$\_\_\_\_\_ must be paid to unsecured creditors in order to comply with the liquidation test for confirmation and the debtor calculates that a minimum of \$\_\_\_\_\_ must be paid to unsecured, non-priority creditors in order to comply with the Means Test.

**Check if applicable:**

[     ] **Motion to Assume or Reject Executory Contracts and Unexpired Leases**

- A. The debtor(s) moves to assume or reject the following executory contracts and unexpired leases. If assumed, payments due after the filing of the case will be paid directly by the debtor(s) rather than by the trustee.
  
- B. Unless otherwise provided, the debtor(s) proposes to promptly cure any pre-bankruptcy defaults on the assumed leases or contracts over a period of \_\_\_\_\_ months, with said payments to be made by the trustee.

If Assumed, Amount of  
Creditor Assume or Reject Arrearage paid in Plan

- 1.
- 2.

**VII. EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**EXECUTORY CONTRACTS AND UNEXPIRED LEASES.** The following executory contracts and unexpired leases are assumed (and pre-petition arrears to be cured in the plan) or rejected (so indicate):

<b>Name of Creditor</b>	<b>Description of Collateral</b>	<b>Monthly Payment</b>	<b>Interest Rate</b>	<b>Pre-petition Arrears</b>	<b>Total Payment</b>	<b>Assume/Reject</b>
		\$	%	\$	\$	
		\$	%	\$	\$	

**VIII. CALCULATION OF PLAN PAYMENT**

A. Secured claims (Section IV Total): \$ \_\_\_\_\_

B. Priority claims (Section V Total): \$ \_\_\_\_\_

C. Administrative claims (Section II Total): \$ \_\_\_\_\_

D. General unsecured claims (Section VI Total): \$ \_\_\_\_\_

E. Separately classified unsecured claims

(Section IV A Total): \$ \_\_\_\_\_

F. Total of (A) through (E) above: \$ \_\_\_\_\_

G. Divide (F) by .90 for total cost including Chapter 13 trustee's fee (this represents the total amount to be paid into the Chapter 13 plan:

**Total Cost of Plan:** \$ \_\_\_\_\_

H. Divide (G) Cost of Plan by Term of Plan: \_\_\_\_\_ months

I. Round up to nearest dollar:

**Monthly Plan Payment:** \$ \_\_\_\_\_ (enter this amount on page 2)

**IX. LIQUIDATION ANALYSIS**

**A. Real Estate:**

Address Fair Market	Value Recorded	Liens (Schedule D)
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

Total Net Equity in Real Property: \$ \_\_\_\_\_

Less Exemptions (Schedule C): \$ \_\_\_\_\_

Amount Available in a Chapter 7: \$ \_\_\_\_\_

**B. Automobile** (Describe year, make and model):

\_\_\_\_\_ Value \$ \_\_\_\_\_ Lien \$ \_\_\_\_\_ Exemption \$ \_\_\_\_\_

\_\_\_\_\_ Value \$ \_\_\_\_\_ Lien \$ \_\_\_\_\_ Exemption \$ \_\_\_\_\_

Net Value of Equity: \$ \_\_\_\_\_

Less Exemptions (Schedule C): \$ \_\_\_\_\_

Available Chapter 7: \$ \_\_\_\_\_

**C. All Other Assets** (all remaining items on Schedule B): (Itemize as necessary)

Value: \$ \_\_\_\_\_ Less Exemptions (Schedule C): \$ \_\_\_\_\_

Available Chapter 7: \$ \_\_\_\_\_

**SUMMARY (Total amount available under Chapter 7)** -- calculated based upon Net Equity (A and B) plus Other Assets (C) less any claimed exemptions:

**TOTAL AMOUNT AVAILABLE UNDER CHAPTER 7:** \$ \_\_\_\_\_

Additional Comments regarding Liquidation Analysis:

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**X. GENERAL PROVISIONS**

1. Unless otherwise ordered, any creditor holding a claim secured by property which is removed from the protection of the automatic stay, whether by judicial action, voluntary surrender, or through operation of the plan, will receive no further distribution from the trustee, unless an itemized proof of claim for any deficiency is filed within one-hundred twenty (120) days (or such other period as the Court orders) after the removal of the property from the protection of the automatic stay. For purposes hereof, the removal date shall be the date of the entry of the order confirming the plan, modifying the plan, or granting relief from stay, as applicable. This also applies to creditors who may claim an interest in, or lien upon, property which is removed from the protection of the automatic stay of another lien holder or released to another lien holder.

2. If a claim is listed in the plan as secured and the creditor files a proof of claim as an unsecured creditor, the creditor shall be treated as unsecured for purposes of distribution and for any other purpose under the plan.

3. Unless otherwise ordered by the Court, all property of the estates as defined in 11 U.S.C. §§ 541 and 1306, including, but not limited to any appreciation in the value of real property owned by the Debtor(s) as of the commencement of the case, shall remain property of the estate during the term of the Plan and shall vest in the Debtor(s) only upon closing of the case. All property of the estate shall remain within the exclusive jurisdiction of the Bankruptcy Court.

4. Confirmation of the plan shall impose a duty on the holders and/or servicers of claims secured by liens on real property to apply the payments received from the trustee on the prepetition arrearages, if any, only to such arrearages; to deem the prepetition arrearages as contractually cured by confirmation; to apply the direct mortgage payments, if any, paid by the trustee or by the debtor(s) to the month in which they were made under the plan or directly by the debtor(s), whether such payments are immediately applied to the loan or placed into some type of suspense account; to notify the trustee, the debtor(s) and the attorney for the debtor(s) of any changes in the interest rate for an adjustable rate mortgage and the effective date of the adjustment; to notify the trustee, the debtor(s) and attorney for the debtor(s) of any change in the taxes and insurance that would either increase or reduce the escrow portion of the monthly mortgage payment; and to otherwise comply with 11 U.S.C. Section 524(i).

5. All contractual provisions regarding arbitration or alternative dispute resolution are rejected in connection with the administration of this Chapter 13 case.

**XI. ADDITIONAL CREDITOR DUTIES**

*See* Federal Rule of Bankruptcy Procedure 3002.1 - Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence - Effective 12/1/11.

## **XII. ADDITIONAL DEBTOR DUTIES**

1. Insurance. Debtor shall maintain insurance as required by law, contract, security agreement or Order of this court.
2. Payment Records to Trustee. Debtor shall keep and maintain records of payments made to Trustee.
3. Payment Records to Secured Creditor(s). Debtor shall keep and maintain records of post-petition payments made to Secured Creditor(s).
4. Domestic Support Obligation(s). Under 11 U.S.C. § 1325(a)(8) and § 1328(a), if the debtor owes domestic support obligations, whether owed at the time of filing or incurred during the pendency of the bankruptcy case, the debtor must file a certification with the Chapter 13 Trustee stating that all such payments due under the plan have been paid before a discharge order may enter. Debtor shall maintain a record of all domestic support obligation payments paid directly to the recipient pursuant to a separation agreement, divorce decree, applicable child support collection unit order or other court's order.
5. Change in Address. Debtor must notify the court and the Trustee if the address or contact information changes during the pendency of the case. Notification must be made in writing within fifteen (15) days of when the change takes place.
6. Disposal of Property. The Debtor(s) shall not transfer, sell, encumber, or otherwise alienate property of the estate with a value of more than \$1,000 other than in accordance with the confirmed Plan or other order of the Bankruptcy Court. The Debtor shall be responsible for preserving and protecting all property of the estate.

## **XIII. OTHER PLAN PROVISIONS**

