



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 PROPOSED AMENDMENTS TO LOCAL RULES, FORMS, AND APPENDICES

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 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 it proposes to amend the Local Rules, Forms, and Appendix as follows:

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(b), the U.S. Bankruptcy Court for the District of Rhode Island invites public comment on the above referenced proposed amendments. Copies of the proposed amendments are available at the Clerk's office or on our website at www.rib.uscourts.gov. Comments on the proposed rules, forms, and appendix should be received by September 23, 2011 and can be made on-line at www.rib.uscourts.gov or in writing to the Clerk of Court at the address below.

September 2, 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**

RED-LINED 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, or by~~ cashier's check, or money order, made payable to "Clerk, U.S. Bankruptcy Court." Payment by personal check, ~~or credit card, debit card, or by ACH withdrawal~~ will be accepted only if the ~~check or credit card~~ **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.

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

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(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. file with the Clerk's Office an application for registration using Form A entitled, "Electronic Case Filing System Attorney Registration Form", and The filer must also meet the minimum system requirements.

(ii) An ~~Application for Limited Use/Claim Password for Electronic Case Filing System~~, Form E, shall be submitted by any ~~Creditor~~ **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 forms are is** available on the Court's Internet website (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 ~~program~~ **modules**, or certification by the Clerk in circumstances where completion of the Court's training ~~program~~ **modules** is not required, each Electronic Filer will receive a System password.

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(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** ~~participate in Court-sponsored ECF training~~ 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. 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.

(d) Format for Filing Electronic Documents.

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~~(4) Conventional Filing of Sealed Documents.~~ Motions to file documents under seal shall be filed electronically without attaching the documents that are the subject of the motion. Contemporaneous with filing the motion to seal, the Electronic Filer shall conventionally file the documents sought to be placed under seal. If the motion to file under seal is granted, the related documents will be maintained by the Clerk until further order.

...

(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. ~~and only the following credit cards are acceptable for payment of such fees: American Express, Discover, MasterCard, or Visa.~~ 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, ~~or~~ 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, ~~or~~ 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]

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(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 ~~seven~~ **two (7 2)** days, to finalize the Order. If either party fails to perform as required herein, the aggrieved party shall file **an 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.

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

**FOURTH ~~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.¹ 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:

¹ 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 ~~a~~the principal residence ~~of in which~~ 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 (2nd Amended Form A) ~~together with a Proposed Loss Mitigation Order with applicable deadlines supplied (2nd Amended Form C).~~ The Creditor shall have fourteen (14) days to object. If no objection is filed, the Bankruptcy Court may enter ~~the proposed order~~ 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 (2nd Amended Form A), ~~together with a Proposed Loss Mitigation Order with applicable deadlines supplied (2nd Amended Form C).~~ 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 (2nd 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

3. 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), ~~together with a Proposed Loss Mitigation Order with applicable dates supplied (2nd Amended Form C).~~ 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 ~~One-sided~~ status reports- 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. ~~are not acceptable, and will be stricken 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 ~~should~~ **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 ~~60~~ 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, and 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, amending various sections, as well as Forms A and B. 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 Request¹ 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. _____

¹ All capitalized terms have the meanings defined in the section on Loss Mitigation Procedures.

[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 60 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 RULES AND FORMS EFFECTIVE DECEMBER 1, 2011**

RED-LINED COPY

RULE 3002-1 FILING PROOF OF CLAIM OR INTEREST [Modified 12/1/11]

(a) Service of Proof of Claim on Attorney for the Debtor and case trustee. An original proof of claim shall be filed with the Clerk. In addition, in all chapters, the claimant shall, contemporaneously with the filing, serve a copy of the proof of claim, with all attachments thereto, on the trustee, if any, and on the debtor's attorney, or debtor, if pro se.

(b) Notice to Creditors in Chapter 7 Cases. Following expiration of the bar date for filing claims, the Clerk and parties designated to provide service may limit the serving and distribution of papers, except notices as governed by Fed. R. Bankr. P. 2002, to those parties who have filed proofs of claim or who have been granted extensions within which to file claims, excepting therefrom, however, creditors whose claims have been fully disallowed.

(c) Creditors Duties in Chapter 13 Cases - *See Federal Bankruptcy Rule 3002.1 Notice Relating to Claims Secured by Security Interest in the Debtor's Principal Residence -Effective 12/1/11.*

(1) Notice of Contract Change

~~(A) Creditor's Duty to file Notice of Contract Change. At any time during the pendency of the debtor's case, a creditor must file on the Claims Register and serve, by first class mail, upon the trustee, debtor, and debtor's counsel, at least thirty (30) days before the change is to take place, or a payment at a new amount is due, a "Notice of Contract Change".~~

~~(B) Contents of Notice. The notice shall outline any change(s) in the amount owed by Debtor under any Agreement, including any change(s) in the:~~

~~(i) Interest rate;~~

~~(ii) Escrow payment requirement;~~

~~(iii) Insurance premiums;~~

~~(iv) Change in payment address or other similar matters impacting the amount owed by debtor under such Agreement (each a "Contract Change").~~

~~(C) Disallowance for failure to comply. Additional amounts owed by the debtor due to a Contract Change may be disallowed by the Court to the extent the amounts:~~

~~(i) Were not reflected in a Notice of Contract Change filed as required by this rule, and;~~

~~(ii) Exceed the amount set forth in the proof of claim filed by the creditor or deemed filed under this plan.~~

~~**(D) Debtor's Duties and time to object.** Within thirty (30) days of receipt of the Notice of Contract Change, debtor shall either adjust the Post-Petition Payment to the amount set forth in the Notice of Contract Change, or file a motion with the court, objecting to the payment amount listed in the Notice of Contract Change and the stated reasons for the objection.~~

~~(2) Notice of Outstanding Obligations~~

~~**(A) Creditor's Duty to file Notice of Outstanding Obligations.** At any time during the pendency of the debtor's case, a creditor shall file on the Claims Register and serve upon the trustee, debtor, and debtor's counsel within sixty (60) days after the date such Outstanding Obligations were incurred, a Notice of Outstanding Obligations. Said Notice must be sworn to by the creditor pursuant to 28 U.S.C. § 1746, referencing the paragraph(s) (or specific section(s) and page number(s)) in the Agreement that allows for the reimbursement of the services and/or expenses. This subsection will not apply to the extent that the court has previously approved a creditor's outstanding obligations pursuant to a Court order or conditional order.~~

~~**(B) Contents of Notice.** The notice shall contain an itemization of any obligations arising after the filing of this case that the creditor believes are recoverable against the debtor or against the debtor's property (the "Outstanding Obligations"). Outstanding Obligations include, but are not limited to:~~

~~(i) All fees, expenses, or charges incurred in connection with any Agreement, such as any amounts that are due or past due related to unpaid escrow or escrow arrearages;~~

~~(ii) Insurance premiums;~~

~~(iii) Appraisal costs and fees;~~

~~(iv) Taxes;~~

~~(v) Costs associated with the maintenance and/or upkeep of the property; and other similar items.~~

~~**(C) Time to Object.** The debtor may file a motion with the court no later than sixty (60) days following the filing of a Notice of Outstanding Obligations, objecting to the amounts listed in the Notice of Outstanding Obligations and stating the reasons for the objection.~~

~~(D) The bankruptcy court shall retain jurisdiction to resolve disputes relating to any Notice of Outstanding Obligations.~~

~~(3) **Application for Reimbursement of Costs and Fees of Professionals.** Pursuant to Bankruptcy Rule 2016 and Local Rule 2016-1(d), a creditor must file an application with the court on an annual basis if it wishes to be compensated from the debtor or the estate for services rendered or expenses incurred by its professionals [attorneys, accountants, appraisers, auctioneers, or other professional persons], after debtor's filing of the petition and before the issuance of the Notice of Discharge. See, R.I. LBR 2016-1(d)~~

AMENDMENTS TO THE RHODE ISLAND BANKRUPTCY COURT'S LOCAL FORM, EFFECTIVE DECEMBER 1, 2011

Rhode Island Bankruptcy Form W.1, Chapter 13 Plan, Provision X - Additional Creditor Duties, is being modified as follows:

XI. ADDITIONAL CREDITOR DUTIES

Additional Terms Applicable to Creditors

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.

1. Notice of Contract Change.

~~(A) Pursuant to R.I. LBR 3002-1(c)(1) at any time during the pendency of Debtor's case, a Creditor must file on the Claims Register and serve upon the Trustee, Debtor, and Debtor's counsel (if applicable), at least thirty (30) days before the change is to take place, or a payment at a new amount is due, a notice (the "Notice of Contract Change") outlining any change(s) in the amount owed by Debtor under any Agreement, including any change(s) in the interest rate, escrow payment requirement, insurance premiums, change in payment address or other similar matters impacting the amount owed by Debtor under such Agreement (each a "Contract Change"). Additional amounts owed by the Debtor due to a Contract Change **may be disallowed by the Court** to the extent the amounts (i) were not reflected in a Notice of Contract Change filed as required by this subsection, and (ii) exceed the amount set forth in the proof of claim filed by the Creditor or deemed filed under this Plan.~~

~~(B) Within thirty (30) days of receipt of the Notice of Contract Change (defined above), Debtor shall either adjust the Post-Petition Payment to the amount set forth in the Notice of Contract Change, or file a motion with the court, objecting to the payment amount listed in the Notice of Contract Change and the stated reasons for the objection.~~

2. Notice of Outstanding Obligations.

~~(A) Pursuant to R.I. LBR 3002-1(c)(1) at any time during the pendency of the Debtor's case, a Creditor shall file on the Claims Register and serve upon the Trustee, Debtor, and Debtor's counsel (if applicable) a notice containing an itemization of any obligations arising after the filing of this case that the Creditor believes are recoverable against the Debtor or against the Debtor's property (the "Outstanding Obligations"). Outstanding Obligations include, but are not limited to, all fees, expenses, or charges incurred in connection with any Agreement, such as any amounts that are due or past due related to unpaid escrow or escrow arrearages; insurance premiums; appraisal costs and fees; taxes; costs associated with the maintenance and/or upkeep of the property; and other similar items. Within sixty (60) days after the date such Outstanding Obligations were incurred, a Notice of Outstanding Obligations shall be filed on the Claims Register, sworn to by the Creditor pursuant to 28 U.S.C. § 1746, referencing the paragraph(s) (or specific section(s) and page number(s)) in the Agreement that allows for the reimbursement of the services and/or expenses. **This subsection will not apply to the extent that the court has**~~

~~previously approved a Creditor's outstanding obligations pursuant to a Court order or conditional order.~~

~~(B) The Debtor reserves the right to file a motion with the court within sixty (60) days following the filing of a notice of outstanding obligations, objecting to the amounts listed in the Notice of Outstanding Obligations and stating the reasons for the objection. The bankruptcy court shall retain jurisdiction to resolve disputes relating to any Notice of Outstanding Obligations.~~

3. Application for Reimbursement of Costs and Fees of Professionals.

~~Pursuant to Bankruptcy Rule 2016 and Local Rule 2016-1(d), a Creditor must file an application with the court no less than on an annual basis if it wishes to be compensated from the Debtor or the estate for services rendered or expenses incurred by its professionals [attorneys, accountants, appraisers, auctioneers, or other professional persons], after Debtor's filing of this Petition and before the issuance of the Notice of Discharge. The application shall include a detailed statement setting forth (1) the services rendered, time expended and expenses incurred during the previous 12 month period, and (2) the amounts requested. The application shall include a statement sworn to by the Creditor pursuant to 28 U. S.C. § 1746 that references the paragraph number(s) (or specific section(s) and page number(s)) in the Agreement that allows for the reimbursement of the services and/or expenses. A Creditor may request approval of multiple fees and expenses in a single application and any application under this subsection must be filed on an annual basis to include all services rendered during the previous 12 month period. A final application under this subsection must be filed not later than thirty (30) days after the issuance of the Notice of Discharge in this case. **Failure to comply with the provisions in this subsection may result in disallowance by the Court of such fees and expenses.** The Debtor reserves the right to object to any application filed under this subsection. **This subsection will not apply to the extent that the court has previously approved a Creditor's fees or expenses pursuant to a Court order or conditional order.** The bankruptcy court shall retain jurisdiction to resolve disputes relating to any fee applications filed pursuant to this subsection.~~