

## UNITED STATES BANKRUPTCY COURT

### DISTRICT OF RHODE ISLAND

#### SEVENTH AMENDED LOSS MITIGATION PROGRAM AND PROCEDURES

##### I. PURPOSE

The Loss Mitigation Program 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 Loss Mitigation Program aims to facilitate such resolution by opening communications between the debtors' and lenders' decision-makers. While the Loss Mitigation Program stays certain bankruptcy deadlines that may delay the normal progress of bankruptcy administration, more importantly, the Loss Mitigation Program 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. The terms of a loss mitigation solution will vary in each case according to the particular needs and goals of the parties.

##### III. ELIGIBILITY

The following definitions describe the types of parties, properties and loans that are eligible for participation in the Loss Mitigation Program:

###### A. DEBTOR

The term "Debtor" means any individual debtor in a case filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code, including joint debtors. If the Debtor is represented by counsel, the term "Debtor" is to be interpreted to include both the Debtor and the Debtor's counsel, unless the Debtor, with the approval of Debtor's counsel, has expressly requested and authorized direct involvement without counsel. As a condition of a Chapter 7 Debtor's participation in loss mitigation, the Debtor must timely file a financial management course certificate within sixty days of the initial date set for the § 341 meeting of creditors pursuant to Fed. R. Bankr. P. 1007(c) and comply with all other requirements of the Bankruptcy Code. If the financial course certificate is not timely filed then loss mitigation may be terminated. 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. Nothing herein prevents a party from filing a motion for specific relief.

## **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 AND ESCROW**

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. The term “Escrow” means the payment in excess of principal and interest as defined in the applicable Loan document(s).

## **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 § 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**

In a Chapter 7 case, the request for loss mitigation must be filed within 60 days of the petition date by one of the methods provided below. A loss mitigation request filed after the 60th day following the petition date must be accompanied by a motion to file out of time, pled with specificity. The consideration of such motion is within the Court’s discretion. In a Chapter 13 case, the request for loss mitigation may be filed at any time by one of the methods provided below, although parties are encouraged to request loss mitigation as early in the case as possible.

## **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 (3<sup>rd</sup> Amended Form A) (“Debtor’s Request for Loss Mitigation). 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. If the Creditor is the United States, its

agency, corporations, officers or employees [e.g., HUD], service of the Notice and/or Request for Loss Mitigation shall be made at the local office of the United States Attorney, to the attention of Michael Iannotti, Esq.

2. Alternatively, a Debtor may file with the Court and serve on the Creditor and its counsel, if known, a Debtor's Request for Loss Mitigation. 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 the Debtor's Request for Loss Mitigation. Use separate forms for additional creditors (liens). If the creditor/lender is the United States, its agency, corporations, officers or employees [e.g., HUD], service of the Notice and/or Request for Loss Mitigation shall be made at the local office of the United States Attorney, to the attention of Michael Iannotti, Esq.

3. If a Creditor has filed a motion for relief from the automatic stay pursuant to § 362 of the Bankruptcy Code (a "Lift-Stay Motion"), the Debtor may file a Debtor's Request for Loss Mitigation so long as it is filed within the objection period set for the Lift-Stay Motion. The Debtor shall also timely file an objection to the Lift-Stay Motion stating all the grounds for such objection. 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, all pending matters will be continued, and the parties will be so notified. If the Court enters the Loss Mitigation Order, Lift-Stay Motions will be continued to the next loss mitigation status hearing held in the case.

## **B. BY A CREDITOR**

A Creditor may file with the Court and serve on the Debtor and Debtor's counsel, if any, a Creditor's 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. FEES**

Debtor's Request for Loss Mitigation (3<sup>rd</sup> Amended Form A) requires the Debtor, as part of participation in the Loss Mitigation Program, to consent to the payment of legal fees to Debtor's counsel and Lender's counsel in an amount up to \$2,000 each, or such additional amount as the Court may allow upon application and notice of hearing. Lender's counsel may not require payment of such fee by the Debtor during the loss mitigation process or as a condition of participation in the loss mitigation process and may only assess the fee to the Debtor's Loan account.

## **D. PAYMENT**

This Court's Loss Mitigation Program 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 Loss Mitigation Program. 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. However, during the loss mitigation period, the Debtor must make monthly adequate protection payments, as provided below in Section VI.B.5, to the Creditor at the Creditor's loss mitigation contact address, or such other address as the Creditor may direct.

## **E. 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.

## **F. 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.

To give the Rhode Island Bankruptcy Court Loss Mitigation 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 the Creditor must initially contact the Debtor.
3. The date by which the Creditor must transmit information requests to the Debtor.
4. The date by which the Debtor must transmit information requested by the Creditor.
5. The date by which the Court will hold an initial status hearing (“Initial Status Hearing”) on loss mitigation. In lieu of attending the status hearing, the parties may file a status report (Form E) with proposed Consent Order (Form F) attached, no later than 3:00 p.m. two (2) days prior to the scheduled hearing date. If the Court enters the Consent Order, the Initial Status Hearing will be canceled.

### **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 Loss Mitigation Creditor prior to or after the entry of the Loss Mitigation Order shall be scheduled for hearing on the Initial Status Hearing date and continued to each successive loss mitigation status hearing date; the stay shall be extended pursuant to § 362(e) of the Bankruptcy Code. If, however, it appears that such motions are being filed during the loss mitigation period primarily to drive up costs to the Debtor, 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 loss mitigation process, the Creditor may move to terminate loss mitigation, at which time the Court will schedule the pending Lift-Stay Motion for the same date as any hearing on the motion to terminate loss mitigation.
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 LBR 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, Debtor must stay current with their Chapter 13 plan payments in order to remain eligible for the program.

5. During the loss mitigation period, the Debtor must make monthly adequate protection payments to the Loss Mitigation Creditor in an amount equal to 31% of Debtor's gross monthly income as reported on Bankruptcy Schedules I & J, subject to the exceptions set forth herein. If more than one Loan is subject to loss mitigation, the combined adequate protection payments for all such Loans shall be equal to 31% of Debtor's gross monthly income as reported on Bankruptcy Schedules I & J. In the event 31% of the Debtor's gross monthly income as reported on Bankruptcy Schedules I & J is insufficient to pay the Escrow portion of all Loans subject to loss mitigation, the Debtor shall make monthly adequate protection payments equivalent to the contractual monthly Escrow payments due under the relevant Loans. Further, if the Debtor's contractual monthly mortgage payments, including the Escrow portion, for all Loans subject to loss mitigation is less than 31% of the Debtor's gross monthly income as reported on Bankruptcy Schedules I & J, then the Debtor shall make monthly adequate protection payments equivalent to the contractual amounts due under the Loan documents. Such monthly payments must commence within (a) 30 days of the entry of the Loss Mitigation Order or (b) 10 days after the Creditor provides its contact information, whichever is the later date. Failure to timely make such adequate protection payments may result in termination of loss mitigation. Payment should be sent to the Creditor at the Creditor's loss mitigation contact address, or such other address as the Creditor may direct.

6. Pursuant to Fed. R. Evid. 408, all communications and information exchanged by the Loss Mitigation Parties during the loss mitigation period 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 loss mitigation, if appropriate.

### **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 its 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 HEARING**

The Court will hold an Initial Status Hearing on a date set forth in the Loss Mitigation Order. In lieu of attending the status hearing, the parties may file a status report (Form E) with proposed Consent Order (Form F) attached, no later than 3:00 p.m. two (2) days prior

to the scheduled hearing date. If the Court enters the Consent Order, the Initial Status Hearing will be canceled.

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

1. Chapter 13 Cases: The Loss Mitigation Parties shall file a written request for Bankruptcy Court approval of any resolution or settlement reached during the loss mitigation process in a Chapter 13 case. *See also* Section X *infra*.
2. Chapter 7 Cases: The Loss Mitigation Parties are not required to seek Bankruptcy Court approval of any resolution or settlement reached during the loss mitigation process, including approval of any loan modification agreement, and such Parties are authorized to effectuate such resolution or settlement without further order or approval of the Bankruptcy Court or the Chapter 7 Trustee. However, the Loss Mitigation Parties are required to file Form D upon the successful completion of loss mitigation. *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 counsel, 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 seven (7) days prior to the Loss Mitigation Session.

#### **B. LOSS MITIGATION SESSIONS**

Loss Mitigation Sessions may be conducted in person, telephonically, via video conference or by e-mail communication. 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.

## **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. 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 in Chapter 13 cases and may approve the same ("Resolution"), 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 in Chapter 13 cases must be accompanied by a completed and signed Form D, Proposed Loan Modification Agreement. Upon Resolution in a Chapter 7 case, the Loss Mitigation Parties shall file a completed and signed Form D, Proposed Loan Modification Agreement.

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, other than those fees authorized by Section V.C. above, all such fees, costs or charges shall be disclosed to the Debtor, the case trustee, the United States Trustee, and to the Bankruptcy Court prior to (a) approval of the Resolution in a Chapter 13 case or (b) finalization of any Resolution in a Chapter 7 case.

3. Signatures: In a Chapter 13 case, 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 in a Chapter 13 case 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 in a Chapter 13 case 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, Amended Chapter 13 Plan, if applicable, and Updated Objection to Confirmation: 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. The Creditor shall update any previously filed objection to the Chapter 13 Plan, if applicable, at least seven (7) days before the rescheduled confirmation hearing date. If an updated objection is not filed, the Court will deem the original objection to have been withdrawn.

6. Dismissal Not Required: **A Debtor is not required to request dismissal of the bankruptcy case in order to effectuate a Resolution.** 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 Loss Mitigation Program first became effective on November 1, 2009. By General Order 10-001, the Court issued its First Amended Loss Mitigation Program which took effect on January 15, 2010, on April 1, 2010, by General Order 10-002, the Second Amended Loss Mitigation Program went into effect, on August 23, 2010, by General Order 10-003, the Third Amended Loss Mitigation Program took effect, and on February 14, 2011, by General Order 11-001, the Fourth Amended Loss Mitigation Program took effect. On October 3, 2011, the Fifth Amended Loss Mitigation Program took effect, on December 1, 2011, the Sixth Amended Loss Mitigation Program took effect, and on June 3, 2013, by General Order 13-002, this Seventh Amended Loss Mitigation Program will take effect.

Rev. 6.3.13