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# Appendix IX

(Rev. 12/01/11)

## UNITED STATES BANKRUPTCY COURT

### DISTRICT OF RHODE ISLAND

#### SIXTH 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:

###### **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 (2nd 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. 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.

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). 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). 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 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**

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. Sec. 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 status report and shall certify with the status report event that attempts to obtain a joint report were unsuccessful. Single sided status reports will be given a seventeen (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, 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 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 ninety (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 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 Chapter 3 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 the 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 too effect on January 15, 2010, on April 1, 2010, by General Order 10-002, the Second Amended LMP went into effect, August 23, 2010, by General Order 10-003, the Third Amended LMP took effect, on February 14, 2011, by General Order 11-001, the Fourth Amended LMP took effect. On October 3, 2011, the Fifth Amended LMP took effect, which amended various sections as well as Form C. On December 1, 2011, the Sixth Amended LMP will take effect.

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