

LOSS MITIGATION BEST PRACTICES

The Loss Mitigation Program in Rhode Island is based on a similar program in place in the New York Southern Bankruptcy Court. Below are some Best Practice tips learned from that court:

I. SERVICE OF THE LOSS MITIGATION NOTICE/REQUEST:

1. Have a valid address to serve. Should also send a copy to the attorney for the lender if you know who they are (check proof of claim, notice of appearance, motion for relief).
2. Get service address from: proof of claim; entry of appearance; state corporation website; look on creditor's website to find legal department to serve; use bank president's name if necessary. Should serve as many related parties/addresses as available.
3. A copy of the proposed Loss Mitigation Order should be served with the Notice/Request. This order is in PDF fillable format on the court's website. The initial deadlines set forth in the order are based on the date the order is entered.
4. It is recommended that where there are 2 mortgages on the property, that debtor's attorney request LM to address the 2nd as well as the 1st mortgage.
5. It is also recommended that debtor's counsel contact lender's counsel at the outset of the loan modification process and advise them of the loan and property situation to facilitate a smoother process.

II. ONCE LM REQUEST IS FILED AND LM ORDER ENTERED WITH DEADLINES:

1. Lender must post LM contact information in ECF once order approved or at Notice/Request stage.
2. Lenders counsel should immediately send the document requests to debtor's attorney once the LM request is filed (if no objection) or order entered.
3. Strongly recommend that debtor's attorney participate in the entire process and not let debtors do it themselves. Best Practice: Debtor's counsel should be the contact person, not the debtors themselves. A higher probability of success if attorney for the debtor takes the lead. (Loss mitigation firms fraught with fraud, bankruptcy attorneys should not refer clients to these).
4. Debtor's attorney should review financial information debtor is submitting to make sure it makes sense.
5. Debtor's attorney should review the HAMP document checklist posted on the court's website in preparation for assembling the information needed by the lender to consider a loss mitigation request. There is also a link to the HAMP site on the court's loss mitigation page.
6. **If either party fails to perform according to the terms of the LM Order, the**

aggrieved party should file a Motion to Compel compliance with the LM Order, or seek termination of the LM Order if appropriate. If a party chooses instead to file a proposed order to show cause, said order must be accompanied by an affidavit verifying the facts asserted in the order to show cause.

7. Parties are required to participate in a conference (can be done by telephone) or come to court to explain why no session took place. Suggestions for improving the ability of getting a representative of lender involved: send any requests to both groups – send documents by fax to lender and by email to attorneys.

8. HAMP requires an escrow account and this can take a while to figure out the escrow analysis to implement (working with taxing authorities). This can delay the process.

9. Creditors should give specific reasons for denial. Lender should send denial letter first to the attorney so they can be sure it's understandable. Debtors should come back with counteroffers or to try and keep negotiating.

III. LM STATUS REPORT AND LOSS MITIGATION APPROVAL

1. A status report will be due 60 days from the date the Loss Mitigation order is entered.. Debtors have to stay current on their Chapter 13 plan payments to stay in the program.

2. Part of the HAMP program requires a 90 day trial modification. If using this, seek adjournment of the status until completed.

3. Recommend filing a motion to extend time to continue LM process if the termination deadline (contained in paragraph 8 of the order) comes up before completing the process.

4. If Debtor does work out a loan modification – Debtor will have to amend schedules I and J, as necessary, and file an amended Chapter 13 plan within 14 days of the order approving loan modification.

5. Parties can file stipulation regarding a loss mitigation agreement (application for entry of proposed order) and the Court can approve. Order should include language that it survives any dismissal of the case pursuant to §349. Put a lot of detail in the order regarding what happens in the event of default – which balance to use. Make sure all privacy rules are complied with.

IV. COUNSEL FEES FOR PARTICIPATING IN LM PROGRAM

1. Lenders can get some of their costs paid for under the HAMP program. Other costs can be factored into the settlement agreement.

2. Debtor's attorneys have a number of options: (1) determine at the outset of taking the

case if they will request LM and determine their fee appropriately at retention; (2) file a fee application and/or motion to amend 2016(b); (3) file an administrative proof of claim for additional fees and seek payment through the plan.

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