

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF RHODE ISLAND

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In re: : BANKRUPTCY GENERAL ORDER
Adoption of Loss Mitigation Program : No. 09-003
and Procedures :

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ORDER ADOPTING LOSS MITIGATION PROGRAM AND PROCEDURES

Pursuant to 11. U.S.C. §105(a), this Court deems it advisable and in the public interest to provide a uniform, comprehensive, court-supervised Loss Mitigation Program in order to facilitate and assist in the consensual resolution of issues involving debtors and creditors with joint contractual interests in residential real property at risk of loss to foreclosure. This loss mitigation program is intended to avoid or reduce unnecessary bankruptcy litigation and cost to debtors and secured creditors, and to enable debtors to reorganize or otherwise address their significant debt and asset structure under the Bankruptcy Code. The need for such a program is evident in light of the various government sponsored loss mitigation programs (Making Homes Affordable) introduced to address the systemic mortgage defaults and the decline in the current residential housing economy nationwide, including the District of Rhode Island. Accordingly, the "Loss Mitigation Program" annexed to this order is hereby adopted.

The Loss Mitigation Program ("LMP") and forms for initiating loss mitigation shall be available at the clerk's office and on the court's web site. The Court may modify the LMP from time to time by duly adopted General Orders, with any such revisions available in the clerk's office and on the court's web site, immediately upon their adoption.

NOW, THEREFORE, IT IS ORDERED that this Court's Loss Mitigation Program is adopted, effective November 1, 2009.

ORDER:



Susan M. Thurston
Clerk of Court
Dated: October 22, 2009

ENTER:



Arthur N. Votolato
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
DISTRICT OF RHODE ISLAND

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 have the effect of delaying 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 satisfaction¹. 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

¹ This is not intended to be an exclusive list of loss mitigation solutions.

counsel, has expressly requested and authorized direct involvement without counsel.

B. PROPERTY

The term "Property" means any real property used as a principal residence in which an eligible 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 (Form A to G.O. 09-003), together with a Proposed Loss Mitigation Order with applicable dates supplied (Form C to G.O. 09-003). The Creditor shall have fourteen (14) days to object. If no objection is filed, the Bankruptcy Court may enter the proposed order "Loss Mitigation Order".
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 (Form A to G.O. 09-003), together with a Proposed Loss Mitigation Order with applicable dates supplied (Form C to G.O. 09-003). The Creditor shall have fourteen (14) days to object. If no objection is filed, the Bankruptcy Court may enter a Loss Mitigation Order.
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 (Form A to G.O. 09-003). 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.

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 (Form B to G.O. 09-003), together with a Proposed Loss Mitigation Order with applicable dates supplied (Form C to G.O. 09-003). The Debtor shall have seven (7) days to object. If no objection is filed, the Bankruptcy Court may enter a Loss Mitigation Order.

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 held a hearing to consider the objection. At least 2 days prior to the hearing, a party objecting to loss mitigation must present to the Court and parties, specific reasons why it believes that 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 by sworn testimony, if necessary.

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, or the date and time set for a status conference at which verbal reports must be provided by the parties. Whenever possible, in Chapter 13 cases, the status conference will coincide with the first date set for confirmation of the Chapter 13 plan, or any continued confirmation hearing. Where a written report is required, it should be filed not later than 7 days after the conclusion of the initial loss mitigation session.
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. Except where necessary to prevent irreparable injury, loss or damage, the LM Party Creditor shall not file a Lift-Stay Motion during the loss mitigation period. Any Lift-Stay Motion filed by such LM Party Creditor prior to the entry of the Loss Mitigation Order shall be continued 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.
2. In a Chapter 13 case, 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 extended to permit the Creditor an additional fourteen (14) days after the conclusion or termination of loss mitigation.
3. During the Loss Mitigation period, Debtors must stay current with their Chapter 13 plan payments in order to remain eligible for the program.
4. Pursuant to Federal Rule of Evidence 408, all communications and information exchanged by the Loss Mitigation Parties during the loss mitigation procedure will be inadmissible in any subsequent proceeding.

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.

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 either a written or verbal 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 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.

D. BANKRUPTCY COURT APPROVAL

The Loss Mitigation Parties shall file a written request for Bankruptcy Court approval of any resolution or settlement reached during loss mitigation.

VIII. THE LOSS MITIGATION PROCESS

A. INITIAL CONTACT

Within seven (7) days following entry of a Loss Mitigation Order, the contact person designated by each Creditor shall contact the Debtor's attorney, or Debtor, if specifically authorized, and any other Loss Mitigation Party, unless a different deadline is set by the Bankruptcy Court. 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 limit additional issues or proposals that may arise during the session. During the initial contact phase, the Loss Mitigation Parties should discuss the following:

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 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. At 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.

D. SETTLEMENT AUTHORITY

Each Loss Mitigation Party must have a 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.

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 by filing an extension in writing on the docket in the main bankruptcy case and served on all parties in interest, who shall have three (3) days to object to said extension.
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, and shall state the reasons for the request.

Except where immediate 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 it is deemed appropriate or 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, 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 a 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 from 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. SETTLEMENT

The Bankruptcy Court will consider any agreement or resolution reached during loss mitigation (a "Settlement") and may approve the Settlement, subject to the following provisions:

1. Implementation: A Settlement 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.
2. Fees, Costs or Charges: If a Settlement 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 and to the Bankruptcy Court prior to approval of the Settlement.
3. Signatures: Consent to the Settlement 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 Settlement may be approved by the Bankruptcy Court without further notice, or upon such notice as the Bankruptcy Court directs, unless additional notice or a hearing is required by the Bankruptcy Code or Bankruptcy Rules. Where a Debtor is not represented by counsel, a Settlement shall not be approved until after the Bankruptcy Court has conducted a hearing at which the Debtor shall appear in person.
5. Amended Schedules I and J and Amended Chapter 13 Plan, if applicable:
Within fourteen (14) days after Court approval of a Settlement, 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**

Settlement. To ensure that the Settlement is enforceable, the Loss Mitigation Parties must request Bankruptcy Court approval of the Settlement. Where the Debtor requests or consents to dismissal of the bankruptcy case as part of the Settlement, the Bankruptcy Court may approve the Settlement 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, this LMP shall become effective on November 1, 2009.

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In re:

Debtor(s) : BK No.
Chapter

- - - - - x

NOTICE AND/OR REQUEST FOR LOSS MITIGATION - BY THE DEBTOR

I am a Debtor in this case, and hereby request loss mitigation with respect to *[Identify the property, loan and creditor(s) for which loss mitigation is requested]*:

NAME OF CREDITOR: _____

PROPERTY ADDRESS: _____

SIGNATURE

I understand that if the Court orders loss mitigation in this case, I am required to comply with the Loss Mitigation Procedures, and will participate in loss mitigation in good faith. I understand that loss mitigation is voluntary, and that I am not required to enter into any agreement or settlement with any other party as part of this loss mitigation, and understand that no other party is required to enter into any agreement or settlement with me. I also understand that **I am not required to request dismissal of this case** as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.

Sign: _____ Date: _____, 2009

DEBTOR INFORMATION:

Print Full Name: _____

Mailing Address: _____

Telephone Number: _____

Email Address (if any) _____

In re: _____, Debtor
BK No. _____

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Notice/Request for Loss Mitigation

Attorney Information (if any):

Name: _____

Address: _____

Telephone Number: _____ Fax Number: _____

Email Address (if any) _____

Preferred Method of Contact: _____ Debtor's Attorney
_____ Debtor

Pursuant to Section V of the Loss Mitigation Program, the above named Creditor has fourteen (14) Days to file with the Court and serve on the Debtor and Debtor's attorney, any objection to this Request at:

U.S. Bankruptcy Court, District of Rhode Island
The Federal Center, 380 Westminster Street,
Providence, Rhode Island 02903

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In re: :

BK No.

: Chapter

Debtor(s)

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LOSS MITIGATION REQUEST - BY A CREDITOR

I am a creditor (including a holder, assignee, servicer or trustee of a mortgage or lien secured by property used by the Debtor as a principal residence) of the Debtor. I hereby request loss mitigation with respect to *[Identify the property and loan for which you are requesting loss mitigation]*:

SIGNATURE

I have reviewed the Loss Mitigation Procedures, and understand that if the Court orders loss mitigation in this case, I will be bound by the Loss Mitigation Procedures, and will participate in loss mitigation in good faith. If loss mitigation is ordered, I agree to provide the Court with a written or verbal status report stating whether or not the parties participated in one or more loss mitigation sessions, whether or not a settlement was reached, and whether negotiations are ongoing, and I **will not require the Debtor to request or cause dismissal of this case** as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.

Sign: _____ Date: _____, 2009

Print Name: _____

Title: _____

Firm or Company: _____

Telephone Number: _____

E-mail address (if any): _____

Pursuant to Section V of the Loss Mitigation Program, the above named Debtor has seven (7) Days to file any objection to this Request at:

**U.S. Bankruptcy Court, District of Rhode Island
The Federal Center, 380 Westminster Street,
Providence, Rhode Island 02903.**

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In re: : BK No.
 : Chapter
 :
 Debtor(s)

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LOSS MITIGATION ORDER

- A Loss Mitigation Request² was filed by the Debtor on _____, 200____.
- A Loss Mitigation Request was filed by a creditor on _____, 200____.
- The Court raised the possibility of loss mitigation, and the parties have had notice and an opportunity to object.

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. _____

[Additional parties, if any.]

It is further **ORDERED**, that the Loss Mitigation Parties shall
comply with the Loss Mitigation Procedures annexed to this Order; and
it is further

² All capitalized terms have the meanings defined in the section on Loss Mitigation Procedures.

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

1. Each Loss Mitigation Party shall designate contact persons and disclose contact information by _____ *[suggested time is 7 days]*, 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.**
3. Each Loss Mitigation Party must make its information request, if any, within **fourteen (14) days of the date of this Order.**
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.**
5. The Loss Mitigation Session shall be scheduled not later than _____ *[suggested time is within 45 days of the date of the Order]*.
6. The loss mitigation period shall terminate on _____ *[suggested time is within 60 days of the date of the Order]*, unless extended as provided in the Loss Mitigation Procedures.

It is further **ORDERED**, that a status conference will be held in this proceeding on _____ *[within 60 days unless extended by Court Order]* (the "Status Conference"). The Loss Mitigation Parties shall appear at the Status Conference and provide the Court with a verbal Status Report, unless a detailed joint Status Report has been filed at least seven (7) days prior to the date of the

Status Conference with a request that the Status Conference be dispensed with in lieu of the report; and it is further

ORDERED, that at the Status Conference, the Court may consider a proposed Settlement by the Loss Mitigation Parties, or may continue the Status Conference to allow more time to complete the loss mitigation session, or for time to provide adequate notice of a request for approval of a Settlement; and it is further

ORDERED, that any other pending matters between the Loss Mitigation Parties are hereby continued to the date of the Status Conference, 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 extended until fourteen (14) days after the termination of the loss mitigation period, or any extension thereof.

Entered as an Order of this Court.

Dated at Providence, Rhode Island, this _____ day of _____, 2009.

Arthur N. Votolato
U.S. Bankruptcy Judge

Entered on docket: