

1. If a debtor has already participated in a loan modification program (City of Providence/HUD) and it is denied pre-petition, are they eligible for the bankruptcy court program?

This would be a fact question for the Judge to decide upon a request for loss mitigation. The program provides an opportunity for a creditor to object to a loss mitigation request and to present information as to why such a request would not be successful (already attempted).

2. If a debtor has already received a discharge in their pending case, are they eligible to participate in the bankruptcy court program?

It depends. In a Chapter 7 case, loss mitigation must be requested within 60 days of filing for bankruptcy, unless the Court grants a motion to file out of time based on specific reasons for the delay.

3. Is a debtor under Chapter 7 eligible to participate in the program?

Yes, individual debtors under chapters 7, 11, 12 and 13 are all eligible to participate, however, in Chapter 7 cases, the request for loss mitigation must be filed within 60 days of the petition date, or such other time as the Court may allow upon a motion to file out of time. As a condition to continued participation in the program, Chapter 7 debtors must timely file a Financial Management course certificate. If the certificate is not timely filed, then loss mitigation may be terminated.

4. Is there a time limit to file for loss mitigation?

Chapter 7 debtors must file for loss mitigation within 60 days of the petition date. Any request for loss mitigation filed after 60 days must be accompanied by a motion to file out of time and contain specific reasons for the delay. There is no time limit to file for loss mitigation under other chapters.

5. Can I still file if the creditor has already filed a motion for relief from stay?

The Debtor may file a loss mitigation request, so long as it is filed within the objection period set for the Lift-Stay Motion. The Debtor must also timely file an objection to the Lift-Stay Motion stating all the grounds for such objection.

6. What happens to the motion for relief from stay when loss mitigation is filed?

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. If the debtor fails to cooperate during the loss mitigation process, the creditor's motion to terminate loss mitigation and the relief from stay will be scheduled for hearing

7. Who is served with the loss mitigation request? How and where to?

The Debtor serves its loss mitigation notice/request on the named lender and its attorney, if known. Service addresses may be found: (1) on Proof of claim form; (2) state corporation website; (3) entry of appearances; (4) lender's website - legal department, or use Bank President's name and address, if necessary; (5) on loan documents or correspondence. See, Loss Mitigation webpage resources "Tips on Serving Financial Institutions" and "Links to Financial Institutions Loan Modification Sites". Service is by regular mail, but recommended practice is to also send copy by fax to lender and by email to their counsel, if known. For more information, see the attorney instructions posted on the website.

8. How do I file the notice/request in ECF?

There are several new events in ECF related to the loss mitigation process and they can all be found under the category, "Loss Mitigation". Use the event "Loss Mitigation Notice/Request" to file, completed Form A, which is available in Word or PDF fillable on the Court's LM Forms page.

9. Are there any recommended best practices for getting the loss mitigation negotiations started?

Attorneys have advised the Court that it has proven helpful at the outset of the loan modification process for the debtor's attorney to contact the creditor's attorney and advise them of the loan and property situation to facilitate a smoother process.

10. Under the federal programs, there is a 90 day period to finalize the modification after payment of mortgage for 3 months. How will this trial modification period be handled in bankruptcy?

If using the HAMP program with the trial modification requirement, seek an adjournment of the status conference until the 3month trial period is complete. This will delay confirmation, but HAMP happens quickly so may not end up adding a lot more time. This was not found to be a problem or inhibitor to program success in NYS.

11. Should I continue to make my monthly mortgage payment while in loss mitigation?

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 in Section VI.B.5 of the program.

12. What if I have more than one loan in loss mitigation?

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 subject to the exceptions set forth in Section VI.B.5 of the program.

13. What if payments are insufficient to pay the escrow portion of all loans subject to loss mitigation?

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.

14. When does the debtor begin making the adequate protection payments?

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.

15. What if I can't make the payments?

Failure to timely make such adequate protection payments may result in termination of loss mitigation.

16. Who do I send the payment to?

Payment should be sent to the Creditor at the Creditor's loss mitigation contact address, or such other address as the Creditor may direct.

17. Is there a fee to file for Loss Mitigation?

There is no filing fee for loss mitigation, but in requesting loss mitigation under any chapter, the Debtor must consent to the payment of legal fees to the Debtor's counsel and Creditor'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. However, 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.

18. Who pays? What about the Lenders costs?

The Debtor is ultimately responsible for the cost of participating in loss mitigation, however Lenders may not require payment of the fees by the Debtor during the loss mitigation process or as a condition of participation in the loss mitigation process. These costs may only be assessed to the Debtor's Loan account.

19. What role does the Chapter 13 Trustee have?

Because the confirmation of the plan is delayed pending the outcome of the loss mitigation process, unsecured creditors will not get paid as quickly as they normally would. The Chapter 13 trustee does not have any special role in terms of the LM process, other than to use the new financial data from the Loan Modification agreement to evaluate any amended plan. Confirmations are continued until the loss mitigation process is completed.

20. What happens if the debtor doesn't provide required documents?

The Lender or the Court may move to terminate the loss mitigation period based on non-compliance.

21. What happens if the Creditor does not respond to the Loss Mitigation Order or provide required contact information?

The debtor should file a motion to compel compliance with the loss mitigation order and its terms and ensure that the motion is properly served at all available Creditor addresses and not merely to a PO box address.

22. What happens if we need more time to complete the negotiations for the loss mitigation?

All loss mitigation cases will be set for an initial status hearing approximately 45 days after entry of the loss mitigation order. Parties may attend the status hearing, or file a written Joint

status report (Form D), with a proposed Consent Order (Form F) no later than 3:00 p.m. two (2) days prior to the status hearing, advising the Court on the progress to date and how much additional time they need to complete the negotiations. If the Court enters the Consent Order, the Initial Status Hearing will be canceled.

23. If we are making progress, do we have to appear at the status hearing or can we just inform the court in writing?

In lieu of attending the status hearing, the Loss Mitigation Parties may submit a written Status Report (Form E) with a 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 follow-up status hearing will be canceled.

24. What happens if a Chapter 7 debtor doesn't take their financial management course on time?

If a Chapter 7 debtor fails to 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), the court may terminate loss mitigation.

25. If my Chapter 13 case is dismissed as a result of a successful loss mitigation, will bad faith be assumed?

The program specifically provides that cases do not need to be dismissed if a loan modification is successful, and that the court can approve a settlement agreement. The suggested practice is to modify the plan to pay off the debt and get the discharge right away at confirmation (to rehabilitate credit), rather than dismissing without a discharge.

26. Do we have to use the DMM Portal?

Use of the DMM Portal is no longer a requirement under the Program, but the Portal remains available to the parties if they choose to use it to enhance communications.

27. How do I let the Court know that loss mitigation is complete?

For Chapter 13 cases, approval of a loan modification agreement is required by the Court. Parties should file a Motion to Approve Loan Modification together with a completed and signed Form D, Proposed Loan Modification Agreement.

Chapter 7 cases are not required to seek court approval of a loan modification. However, the Parties are required to file a completed and signed Form D, Proposed Loan Modification Agreement and to enter the event "Loss Mitigation Successfully Completed" in the Court's ECF system.

28. What happens to my Chapter 13 case if a loan modification is approved?

Depending on the terms of the modification, you may be required to file amended schedules I and J, and an amended Chapter 13 plan within fourteen (14) days of approval of the loan modification.

29. What if the Creditor had previously filed an objection to confirmation?

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.

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