

LOSS MITIGATION BEST PRACTICES – UPDATED JUNE 2013

The Loss Mitigation Program in Rhode Island has been recently revised. Below are some Best Practice tips for handling loss mitigation cases:

I. LEGAL CONSIDERATIONS PRIOR TO FILING FOR LOSS MITIGATION:

1. Does Debtor consent to payment of the legal fees for such action?

Under the program, Debtor and Creditor Counsel may request fees up to \$2,000 each, or such additional amount as the Court may allow upon application and notice of hearing. Creditor's counsel may only assess its fee to the Debtor's Loan account.

2. Is the Debtor able to make the required adequate protection payments?

The Debtor must make monthly adequate protection payments, as provided in Section VI.B.5 of the Loss Mitigation Program, to the Creditor at the Creditor's loss mitigation contact address, or such other address as the Creditor may direct within 30 days of the entry of the Loss Mitigation Order or within 10 days after the Creditor provides its contact information, which occurs later.

3. Debtors have to stay current on their Chapter 13 plan payments to stay in the program.

II. SERVICE OF THE LOSS MITIGATION NOTICE/REQUEST:

1. Have a valid address to serve. Counsel should also send a copy of the Notice Request to the attorney for the creditor if known (check proof of claim, notice of appearance, motion for relief).
2. Refer to the Court's [Tips on Serving Financial Institutions](#) to obtain the best service address.
3. Where there are 2 or more mortgages on the property, it is recommended that loss mitigation be requested to address all mortgages.
4. It is also recommended that Debtor's counsel contact Creditor's counsel at the outset of the loss mitigation process and advise them of the loan and property situation to facilitate a smoother mediation process.

III. ONCE LOSS MITIGATION REQUEST IS FILED AND LOSS MITIGATION ORDER ENTERED:

1. Creditor must post contact information on the docket within 7 days of order approving participation in loss mitigation.
2. Within 14 days of entry of Loss Mitigation Order, or such other date as set by the Court,

Creditor's counsel should forward a complete loan modification application package and/or such other information as required by Creditor, to Debtor's counsel for purposes of loss mitigation.

3. It is strongly recommended that Debtor's counsel participate in the entire loss mitigation process, including the document exchange, and not rely upon the debtor to do it alone. It is further recommended that Debtor's counsel should be the contact person for the Creditor, not the debtor. The Court has evidenced a higher probability of success if the attorney for the debtor takes the lead.
4. Debtor's counsel should review the financial information debtor is submitting to make sure it makes sense. Debtor is required to respond to the information request within 14 days after the request is made, unless otherwise directed by the Court.
5. Debtor's counsel should review the HAMP document checklist posted on the Court's website in preparation for assembling the information needed by the Creditor to consider a loss mitigation request. There is also a link to the HAMP site on the Court's loss mitigation web-page.
6. If either party fails to perform according to the terms of the Loss Mitigation Order, the aggrieved party should file a Motion to Compel compliance with the Loss Mitigation Order, or seek termination of the Loss Mitigation Order, as appropriate.
7. Creditors should give specific reasons for a denial of loan modification. Lender should send denial letter first to the Debtor's counsel so they can be sure it's understandable. Debtors should come back with counteroffers or to try and keep negotiating.

III. LOSS MITIGATION STATUS HEARING AND/OR STATUS REPORTS

1. An initial status hearing will be scheduled for approximately 45 days after entry of the order approving loss mitigation. Both Debtor and Creditor Counsel shall appear at the hearing to update the Court on the status of loss mitigation.
2. Alternatively, counsel can jointly file a Joint Status Report (Form E) and Proposed Consent Order (Form F) by 3:00 PM at least two days before the scheduled status hearing.

IV. LOAN MODIFICATION APPROVAL AND POST-APPROVAL DUTIES:

1. Chapter 7 Cases: The Loss Mitigation Parties are not required to seek court approval of any resolution or settlement reached during the loss mitigation process. Upon notification that an agreement has been reached, the Court will enter a docket entry that Loss Mitigation has concluded. However, the Parties are required to file Form D with the Court.

2. Chapter 13 Cases: The Loss Mitigation Parties shall file a written request for court approval of any resolution or settlement reached during the loss mitigation process, which shall be accompanied by a signed and completed Form D, Proposed Loss Mitigation Agreement.
3. If a Chapter 13 Debtor enters into a loan modification with Creditor, Debtor is required to amend schedules I and J and file an amended Chapter 13 plan, as necessary, within 14 days of the order approving loan modification.
4. In addition, 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 objections to have been withdrawn.

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