**LOSS MITIGATION/MORTGAGE MODIFICATION**

**AND MEDIATION PROGRAM**

**(Judge Waites)**

**The following procedures shall be effective for all Notices and Motions for Loss Mitigation/Mortgage Modification and Consent Orders Requiring Loss Mitigation/Mortgage Modification filed on or after January 15, 2017.**

To be effective, all loss mitigation/mortgage modification (“LM/MM”) occurring during a bankruptcy case must be approved by the Court[[1]](#footnote-1) using the following procedures.[[2]](#footnote-2) While nothing herein requires a mortgage creditor to agree to LM/MM, the procedures set forth below are intended to facilitate LM/MM opportunities which may be otherwise provided under applicable non-bankruptcy law or generally offered by the mortgage creditor (“Mortgage Creditor”).[[3]](#footnote-3)

1. **Order Regarding Procedures for Loss Mitigation/Mortgage Modification**
   1. **General LM/MM Procedures.** Shortly after the commencement of any Chapter 13 case assigned to Judge Waites, the Court enters an Order Regarding Procedures for Loss Mitigation/Mortgage Modification, which outlines required LM/MM procedures for the Debtor(s) and Mortgage Creditor. Such general procedures and requirements include, but are not limited to, the granting of limited relief from the automatic stay to initiate and respond to communications regarding LM/MM, the requirement to report to the Court the commencement of any LM/MM communications and the Mortgage Creditor’s obligation to advise Debtor(s), Debtor(s)’ counsel and the Court of its particular LM/MM requirements in certain cases.
   2. **Service of Order.** Debtor(s)’ Counsel or Debtor(s) (if proceeding without the assistance of counsel) shall serve a copy of the Order Regarding Procedures for Loss Mitigation/Mortgage Modification on the applicable Mortgage Creditor within 5 days from the entry of the Order and file a certificate of service within 3 days thereafter.
2. **LM/MM via the Portal (Preferred Method)**
   1. **LM/MM Portal.** The Portal is a secure web platform operated by Default Mitigation Management LLC (“DMM”), available at https://www.dclmwp.com.[[4]](#footnote-4) The Portal is preferred because it allows Court oversight and reduces disputes by enabling parties interested in LM/MM to more quickly communicate and exchange all necessary documentation in a secure and transparent online environment while preserving the record of communication, exchanging documents, and establishing deadlines for completion of the review.
   2. **LM/MM Mediation.** In Portal cases, upon the entry of an Order Requiring Loss Mitigation/Mortgage Modification, the Court appoints a mediator to oversee the LM/MM process and facilitate discussions between the parties.[[5]](#footnote-5)
   3. **LM/MM Portal Procedures.**
      * 1. Debtor(s) are encouraged to participate in LM/MM via the Portal with the assistance Debtor(s)’ Counsel.[[6]](#footnote-6) Debtors who seek to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks.[[7]](#footnote-7) At the beginning of the Debtor(s)’ bankruptcy case and/or before initiating the LM/MM process, Debtor(s)’ Counsel should determine whether the Mortgage Creditor provides applicable LM/MM programs that may benefit the Debtor(s), whether LM/MM is feasible, and review LM/MM requirements with the Debtor(s).
        2. If the Debtor(s) intend to seek LM/MM at the beginning of the case, the Debtor(s) must include the appropriate nonstandard plan language (set forth below in Paragraph e (1) or (2)) in the Plan.[[8]](#footnote-8)
        3. If the Debtor(s) wish to reserve their rights to later pursue LM/MM after confirmation of the Plan, the Debtor(s) should include nonstandard reservation of rights language in the Plan (see Paragraph e (3)).[[9]](#footnote-9) Failure to include such language may preclude subsequent court approval of any LM/MM agreement.
        4. To commence the LM/MM Portal process, Debtor(s)’ Counsel shall file a ***Notice and Motion for Loss Mitigation/Mortgage Modification****, a* proposed ***Order Requiring Loss Mitigation/Mortgage Modification (“LM/MM Order”)****, and a proposed* ***Order Appointing LM/MM Mediator***,[[10]](#footnote-10) using the forms attached as Exhibits J, K and L, and serve on the applicable Mortgage Creditor, co-borrowers or obligors on the loan, and their counsel, if known.[[11]](#footnote-11)

The affected Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Motion to object to the Motion. Any objection must state specific reasons verified as accurate by counsel for the objecting party, including an explanation of any LM/MM options for which Debtor(s) are ineligible. Upon timely objection, a hearing shall be held on the date identified in the Notice and all applicable parties and counsel shall attend. In the absence of an objection, the Court may grant, without a hearing, the Motion and enter the ***LM/MM Order****.*

* + - 1. Upon entry of the ***LM/MM Order***, Debtor(s)’ Counsel shall immediately register on the Portal. **Once the *LM/MM Order* is issued, all communication between the parties regarding LM/MM shall be through the Portal and the parties must comply with the deadlines and requirements set forth in the *LM/MM Order***. Debtor(s)’ Counsel and counsel for the Mortgage Creditor may communicate orally about the LM/MM process; however, counsel must document all significant communication between the attorneys within the Portal shortly after the communication occurs. Failure of counsel to document significant communication made outside the Portal may result in the Court not considering such communication at a future contested hearing and/or sanctions.
      2. Unless the parties are otherwise exempted by a court order, an Order Appointing LM/MM Mediator will be entered shortly after the entry of the LM/MM Order appointing a mediator for the LM/MM process (“Mediator”). Debtor shall serve the Order Appointing LM/MM Mediator on the Mortgage Creditor within three days of the entry of the Order. No later than three days after the entry of the Order Appointing LM/MM Mediator, the Mediator shall review the case for conflicts of interest. If there is a conflict, the Mediator shall immediately report to the Court and counsel by electronic correspondence that the Mediator is unable to serve and that a new Mediator must be appointed.
      3. Within 7 days after entry of the ***LM/MM Order*** or within any other applicable deadline set by non-bankruptcy law, if shorter, the Mortgage Creditor shall register to use the Portal (if not previously registered), assign to the Portal the Mortgage Creditor’s designated counsel and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for current and immediate consideration of all available types of LM/MM. Debtor(s)’ Counsel shall report, by correspondence filed on the Court’s docket, any failure to timely register to use the Portal.

**Loan Transfer during LM/MM Process.** The Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)’ Counsel, the Trustee, the Mediator, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer. **The transferee or new servicer of the loan shall be advised of all of the requirements of these Guidelines and Orders by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation.** The transferee or servicer shall register for the Portal within 5 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.

* + - 1. Within 14 days after entry of the ***LM/MM Order***, unless exempted, the Court's approved online document preparation program (the “Document Preparation Program”) must be used to complete the standard LM/MM forms (the "Debtor(s)’ Prepared Package") and upload the Debtor(s)’ Prepared Package to the Portal. Use of the Document Preparation Program, provided at www.documods.com,[[12]](#footnote-12) is required to expedite the exchange of information between the Debtor(s) and the Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation. [[13]](#footnote-13) Upon uploading the Debtor(s)’ Prepared Package to the Portal, Debtor(s)’ Counsel shall assign the Mediator to the account in the Portal.
      2. Within 7 days after submission of the Debtor(s)’ Prepared Package and any other necessary documentation on the Portal, the Mortgage Creditor shall:

Acknowledge receipt of the information on the Portal;

Provide on the Portal all contact information of the representative in charge of the Debtor(s)’ account; and

Notify Debtor(s)’ Counsel of any additional or updated information required to process the application.

* + - 1. Unless ordered otherwise, the Mediator shall conduct a mediation session (“Initial Mediation Session”) **no later than 30 days** after the entry of the LM/MM Order. The Initial Mediation Session shall be conducted via telephone conference call on a date set by the Mediator, attended by Debtor(s), Debtor(s)’ Counsel, a representative from the Mortgage Creditor with LM/MM authority and counsel for the Mortgage Creditor, and last no longer than an hour. Debtor’s Counsel shall publish the phone number for the conference call on the Portal no later than 3 days before the scheduled mediation.

The cost of the Mediator shall be **$300** for up to a one-hour Initial Mediation Session, divided equally between Debtor and the Mortgage Creditor and shall be paid to the Mediator **no later than 7 days before the scheduled date of the Initial Mediation Session**. In addition to the one-hour mediation session, this $300 compensation includes the Mediator’s review and monitoring of the case in the Portal as well as the Mediator’s reporting to the Court.

* + - 1. After the conclusion of the Initial Mediation Session, the parties and Mediator shall schedule a second one-hour mediation session (“Second Mediation Session”) to be held **within** **45 days after the Initial Mediation Session** to assist in facilitating the resolution of LM/MM efforts. If, prior to the scheduled Second Mediation Session, the parties have reached an LM/MM Agreement, submitted a Trial Period Plan or are near completion of the LM/MM review to the satisfaction of all the parties, the parties may jointly request, no later than five days prior to the scheduled session, the Mediator cancel or reschedule the Second Mediation Session. The Mediator may cancel the Second Mediation Session in his or her discretion. The Second Mediation Session shall be conducted via telephone conference call on a date set by the Mediator, attended by Debtor(s), Debtor(s)’ Counsel, a representative from the Mortgage Creditor with LM/MM authority and counsel for the Mortgage Creditor. Debtor’s Counsel shall publish the phone number for the conference call on the Portal no later than 3 days before the scheduled mediation.

The Mediator ‘s fees and costs for up to a one-hour Second Mediation Session shall total **$300.00**, and should be equally divided by the parties and **paid no later than 7 days** prior to the scheduled date of the Second Mediation Session. This $300 in compensation includes the Mediator’s additional review and monitoring of the case in the Portal as well as the Mediator’s additional reporting to the Court.

After the conclusion of the Second Mediation Session, if a further mediation session is needed to facilitate the resolution of a LM/MM dispute or issue, the parties, with the approval of the Mediator, may agree to an additional one-hour mediation session, which will be held on a date set by the Mediator. Compensation for the Mediator’s services for this additional mediation session shall be at the rate of $300 per hour to be evenly divided between the parties. The Mediator shall report the additional mediation session and the arrangements of the Mediator’s additional compensation to the Court.

* + - 1. **Unless a shorter time is set by applicable law, rules or regulations (such as the CFPB), the Mortgage Creditor shall have a total of 90 days from entry of the *LM/MM Order* (“Loss Mitigation Period”) to completely conclude its consideration and provide a final response to the Loss Mitigation request**. [[14]](#footnote-14) The Mortgage Creditor shall advise on all means of LM/MM, or verify a denial on the merits of the request by filing a ***Mortgage Loan Modification Report,*** using the form attached as Exhibit L.[[15]](#footnote-15) **Any denial shall state specific reasons for the denial.**

Upon the parties’ failure to reach an agreement regarding LM/MM within the 90-day Loss Mitigation Period, the Mediator may extend LM/MM for a period up to 60 days. Any request to extend the Loss Mitigation period beyond 150 days must be made by filing a Motion to Extend the Loss Mitigation Period and Proposed Order Extending the Loss Mitigation Period.

* + - 1. Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)’ Counsel shall submit a proposed ***Order Approving Trial Period Plan*** using the form attached as Exhibit N for consideration and approval by the Court.[[16]](#footnote-16) If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
      2. Any final agreement for LM/MM shall be submitted for approval by the Court by way of ***Consent Order Approving Loss Mitigation/Mortgage Modification***, using the form attached as Exhibit O.[[17]](#footnote-17) If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.

1. If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.
2. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall **not** be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing.
   * + 1. The Mediator must submit a Mortgage Modification Report, using the form attached as Exhibit L, at the conclusion of the LM/MM review.
       2. In order to ensure the timely completion of LM/MM and unless a final report concluding LM/MM has been filed, the Mediator shall notify the Court if the LM/MM efforts are not concluded by the expiration of the Loss Mitigation period or any extensions thereof.

The Mediator may also request by correspondence at any time during the LM/MM process for the Court to hold a status hearing on the LM/MM review.

**If a status hearing is requested by the Mediator, the Debtor(s), Debtor(s)’ Counsel, the representative of the Mortgage Creditor with the most knowledge regarding the LM/MM efforts made in the case and counsel for the affected Mortgage Creditor** **shall appear in person at all scheduled status hearings.** In the event the LM/MM process is completed, approved or denied prior to the scheduled status hearing, parties via counsel may file a report to that effect and request that the hearing be removed from the Court’s calendar.

* + - 1. No later than 60 days after entry of the ***Consent******Order Approving Loss Mitigation/ Mortgage Modification***, the Mortgage Creditor shall deliver all documents necessary to complete the permanent modification to Debtor(s)’ Counsel and the parties shall execute all necessary documents to finalize the modification. Upon the Mortgage Creditor’s failure to timely deliver the necessary documents, the Debtor(s) may file a Motion to Compel and seek attorney’s fees incurred as a result of unreasonable delay.
  1. **Good Faith Requirement.** All parties are required to act in good faith throughout the LM/MM process. The Mediator or all other parties shall immediately report to the Court any party’s failure to timely comply with any of the LM/MM procedures, deadlines or failure to otherwise act in good faith by filing correspondence on the Court’s docket. **Failure to act in good faith may result in sanctions.**
     1. **Motion to Enforce LM/MM Order:** The Debtor(s), Mortgage Creditor, or any other interested party who seeks specific relief based upon an assertion that the other party made a demonstrable error or is not acting in good faith during the LM/MM review, has not timely complied with the deadlines of the LM/MM Order, or other alleged specific grounds of noncompliance with the LM/MM Order or these guidelines may file a Motion to Enforce the LM/MM Order. A Motion to Enforce the LM/MM Order should state its allegations with particularity. The Court may set a hearing on the motion and require attendance of the debtor and a representative of the mortgage who is most knowledgeable on Debtor(s)’ LM/MM request and any other relevant party, along with their counsel. Sanctions including an award of attorney’s fees may be considered at such hearing.
  2. **Chapter 13 Plan Language.** The following nonstandard language has been approved for inclusion in the Chapter 13 plan to indicate the Debtor(s) intention to pursue LM/MM, subject to objection by affected parties.
     + 1. Option One (The Debtor(s) agree to make regular contract payments or adequate protection payments)

*The Debtor(s) shall seek loss mitigation or consensual mortgage modification (LM/MM) of the mortgage loan secured by the following property via the Portal process set forth in Chamber’s Guidelines:*

*[Real Property Description]*

*Beginning on [date], the Debtor(s) will pay either  regular contract payments or  adequate protection payments in the amount of $\_\_\_\_\_\_ directly to [Mortgage Creditor] during the case. If not relieved through LM/MM, the Debtor(s) will also be responsible for payment of any arrearage directly to [Mortgage Creditor]. No payment will be made by the Trustee on this secured claim.*

* + - 1. Option Two (The Debtor(s) are unable to make present payments)

*The Debtor(s)’ plan relies upon loss mitigation or a consensual mortgage loan modification (LM/MM) of the mortgage loan secured by the following property:*

*[Real Property Description]*

*If LM/MM is approved, the Debtor(s) shall directly pay [Mortgage Creditor]’s allowed mortgage claim, including any prepetition and post petition amounts. No payment will be made by the Trustee on this secured claim.*

*In the event that (1) the LM/MM request (and any necessary documentation) is not submitted or is denied or (2) the Debtor(s) fail to timely make any required Trial Period Plan Payments, the Mortgage Creditor may, after 14 days’ written notice to the Debtor(s), Debtor(s)’ Counsel, and the Trustee, submit an affidavit and proposed order seeking relief from the stay. However, the Mortgage Creditor may not obtain relief until its final consideration of LM/MM is concluded and reported to the Debtor(s) and Debtor(s)’ Counsel.*

* + - 1. Option Three (Reservation of Rights Language)

*The Debtor(s) reserve the right to seek loss mitigation or modification of the mortgage loan using the Portal procedures described in Chambers Guidelines during the bankruptcy case.*

* 1. **Attorney’s Fees for LM/MM via the Portal.** Counsel assisting the Debtor(s) with LM/MM via the Portal shall be permitted to charge an attorney’s fee for LM/MM related services. In Chapter 13 cases, a supplemental **$1,700** no-look fee shall be allowed (in addition to the no-look fee established under the Guidelines for compensation for professionals) for consumer cases. In self-employed/small business individual Chapter 13 cases, an **$2,000** no-look fee shall be allowed. The no-look fee may be paid directly by the Debtor from post petition income or exempt assets or through the confirmed Plan. The manner of payment of the no-look fee for LM/MM must be addressed in the ***LM/MM Order***. See Exhibit K**.** The fee provides additional compensation for all services through the completion of the LM/MM process and includes:

1. Filing of the ***Notice and Motion for Loss Mitigation/Mortgage Modification*** and proposed ***LM/MM* *Order***;
2. Assembling and submitting Debtor(s)’ Prepared Package;
3. Filing of other required pleadings and preparation of proposed orders, as applicable;
4. Communicating with the Mortgage Creditor, co-borrower or obligor, and the Mediator;
5. Filing of the proposed ***Order Approving Trial Period Plan***, if applicable; ***Consent Order Approving Loss Mitigation/Mortgage Modification***, or a ***Mortgage Loan Modification Report***; and
6. Appearing at hearings relating to LM/MM, but not including hearings on Debtor(s)’ motion to enforce LM/MM guidelines as ordered by the Court (see below for additional supplemental no-look fees for such matters).
7. Active participation in the Initial Mediation Session.

As an alternative to the no-look fee, Debtor(s)’ counsel and Debtor(s) may agree upon a different fee amount paid by the Debtor(s) directly to counsel upon the completion of the Application for Supplemental Fees procedures listed in SC LBR 2016-1(b)(2).

An additional supplemental no-look fee for LM/MM shall be allowed for representation of Debtor(s) and the filing of related pleadings for the following matters:

**$500** – Upon the conclusion of a contested hearing, including testimony, on Debtor(s)’ motion to enforce LM/MM guidelines.

**$300** – Upon completion of a Second Mediation Session.

The additional supplemental no-look fees set forth above shall be requested at the contested hearing by oral motion at the conclusion of the hearing and authorized by the Court by separate order, or in the event of mediation, a fee order will be issued upon the mediator’s submission of a mediation report indicating that, in the Mediator’s judgment, Debtor(s)’ counsel was active and effective during the mediation session.

In addition to these supplemental no-look fees, in extraordinary LM/MM review processes, Debtor(s)’ counsel may seek an additional fee upon a showing of cause and the filing of an Application for Supplemental Fees under the procedures listed in SC LBR 2016-1(b)(2).

1. **Non-Portal LM/MM**
   1. **Duty to Report Non-Portal LM/MM Efforts for Approval.** Non-Portal LM/MM efforts must be reported to the Court via the filing of correspondence by Debtor(s)’ Counsel, counsel for the Mortgage Creditor or the parties *pro se* or by submission of an order seeking approval within 14 days of initiation of LM/MM.[[18]](#footnote-18) Failure to timely notify the Court of such efforts may result in adverse rulings and/or sanctions.
   2. **Approval of Non-Portal Trial Period Plan**. Upon acceptance of the Debtor in a Trial Period Plan and before the first trial period payment is due, Debtor(s)’ Counsel shall submit a ***Consent*** ***Order Approving Trial Period Plan*** (***Non-Portal)*** using the form attached as Exhibit P. If a copy of the trial period agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
   3. **Approval of Non-Portal Final Agreement for Loss Mitigation/Mortgage Modification.** Any final agreement for LM/MM shall be submitted for approval by the Court by way of a proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification (Non-Portal)***, using the form attached as Exhibit Q. If a copy of the LM/MM agreement is attached to the proposed order, **any private information must be redacted** according to Federal Rule of Bankruptcy Procedure 9037.
2. If the modification to the mortgage involves an extension of new funds or credit, a motion to incur debt or obtain credit should also be filed and properly noticed to all creditors and parties in interest.
3. Dismissal of the bankruptcy case or reaffirmation of the debt shall not be a prerequisite of an agreement for loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at a hearing.
4. If not provided in a previously confirmed plan, an amended plan which provides that all mortgage payments shall be made directly by Debtor(s) to the Mortgage Creditor shall be filed prior to the approval of the final agreement for LM/MM.
5. Upon approval of the final agreement for LM/MM, the Court will grant relief from the automatic stay for the benefit of the Mortgage Creditor upon submission of a proposed order from the Mortgage Creditor via counsel.[[19]](#footnote-19) Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders.
   1. **Attorney’s Fees for Non-Portal LM/MM.** No additional no-look attorney’s fee is authorized for Non-Portal LM/MM efforts. Debtor(s)’ Counsel may seek attorney’s fees in an amount of up to $300 for efforts to obtain Court approval by filing an application for supplemental fees in accordance with SC LBR 2016-1.
   2. **Pursuing LM/MM without Assistance of Counsel.** Debtors who elect to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks, and if unsuccessful, a further opportunity to seek LM/MM during the bankruptcy case will not be approved.

**EXHIBIT J**

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

|  |  |
| --- | --- |
| IN RE:  [Debtor Name],  Debtor(s). | C/A No. \_\_\_\_\_\_\_\_\_\_\_  Chapter \_\_\_\_  **NOTICE AND MOTION FOR LOSS MITIGATION/MORTGAGE MODIFICATION PURSUANT TO JUDGE WAITES’ CHAMBERS GUIDELINES** |

**To: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Mortgage Creditor”) and Parties in Interest**

The Debtor(s), through counsel, hereby move the Court for an Order Requiring Loss Mitigation/Mortgage Modification with respect to the following property:

*[Identify the Property]*

*[Last Four Digits of Loan Number]*

*[Mortgage Creditor’s Name and Address]*

The Debtor(s) request an order directing the parties to participate in the Loss Mitigation/Mortgage Modification (LM/MM) via the Portal as set forth in Judge Waites’ Chambers Guidelines, available at http://scb.uscourts.gov/content/judge-waites

Prior to filing this Motion, Debtor(s)’ Counsel has determined that:

|  |
| --- |
| The Mortgage Creditor is registered with the Portal. Within 14 days after entry of the Order, Debtor(s)’ Counsel will upload to the Portal Debtor(s)’ Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal. |
| The Mortgage Creditor is not registered. The Debtor(s) request that the Court require Mortgage Creditor to register with the Portal within 7 days after entry of the Order. Within 14 days after entry of the Order, Debtor(s)’ Counsel will upload to the Portal Debtor(s)’ Prepared Package together with any additional forms or documents which the Mortgage Creditor may post on the Portal. |

The Debtor(s)  have or  have not previously sought loss mitigation/mortgage modification through any procedure/process during this bankruptcy case or within the previous two years. List dates and results:\_\_\_\_\_\_\_\_\_\_\_\_\_

The Debtor(s)’ current Chapter 13 plan  does or  does not provide for a LM/MM review.

If a previous attempt at loss mitigation/mortgage modification was made or is ongoing, the change of circumstances which makes this attempt more likely to succeed is as follows:

**TAKE FURTHER NOTICE that any response, return and/or objection to this Motion should be filed with the Court no later than 14 days from service of the Motion and a copy simultaneously served on all parties in interest.**

TAKE FURTHER NOTICE that no hearing will be held on this Motion, except as required by the Judge, unless a response, return and/or objection is timely filed and served, in which case, the Court will conduct a hearing on \_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_ at \_\_\_\_ a.m./p.m. at \_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, South Carolina. No further notice of this hearing will be given.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney Name & Fed. ID #

Address

Email

**EXHIBIT K**

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

|  |  |
| --- | --- |
| IN RE:  [Debtor Name],  Debtor(s). | C/A No. \_\_\_\_\_\_\_\_\_\_  Chapter \_\_\_  **ORDER REQUIRING**  **LOSS MITIGATION/MORTGAGE MODIFICATION** |

A Motion for Loss Mitigation/Mortgage Modification (LM/MM) was filed by [Debtor Name] (“Debtor(s)”), and the necessary parties have had notice and an opportunity to object. It appearing that no objections were filed or that any objections filed have been withdrawn or otherwise ruled upon or that the applicable parties now consent, it is hereby

**ORDERED** that the Debtor(s), acting through counsel, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“Mortgage Creditor”) [and additional parties, if any] are directed to participate in LM/MM Portal Program according to Chamber Guidelines; it is further

**ORDERED** that the Debtor(s), Debtor(s)’ counsel, the Mortgage Creditor and its counsel, and any participating co-borrower or obligor shall comply with the LM/MM Procedures set forth in Judge Waites’ Chambers Guidelines (available at www.scb.uscourts.gov/ChambersJW.htm) and engage in the LM/MM process in good faith, and that failure to do so may result in the scheduling of a hearing to consider sanctions or other relief; and it is further

**ORDERED** that the Debtor(s), Debtor(s)’ Counsel, and the Mortgage Creditor and its counsel shall observe the following deadlines:

* + - 1. Upon entry of this Order, Debtor(s)’ Counsel shall immediately register on the Portal.[[20]](#footnote-20) Once registered, all communication between the parties regarding the loss mitigation review shall be sent through the Portal. Communication and negotiation by the Debtor shall be through Debtor(s)’ Counsel unless otherwise allowed by the Court.
      2. Within 7 days after entry of this Order, the Mortgage Creditor shall register to use the Portal (if not previously registered), assign to the Portal the Mortgage Creditor’s designated counsel, and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of all available types of LM/MM. Debtor(s)’ Counsel shall report, by correspondence filed on the Court’s docket, any failure to timely register to use the Portal.
      3. Within 14 days after entry of this Order, Debtor(s)’ Counsel shall upload the standard LM/MM forms (the "Debtor(s)’ Prepared Package") to the Portal and assign the LM/MM Mediator to the account in the Portal. Unless exempted by the Court, the Court's approved online document preparation program (the “Document Preparation Program”), provided at www.documods.com, must be used to complete the Debtor(s)’ Prepared Package.
      4. Within 7 days after submission of the Debtor(s)’ Prepared Package and any additional documentation on the Portal, the Mortgage Creditor shall:

Acknowledge receipt of the information on the Portal;

Provide on the Portal all contact information of the representative in charge of the Debtor(s)’ account; and

Notify Debtor(s)’ Counsel of any additional or updated information required to process the application.

1. **Unless a shorter time is set by applicable law, rules or regulations or unless extended by the Mediator**, the Mortgage Creditor shall have a total of 90 days from entry of this Order (“Loss Mitigation Period”) to conclude its consideration and provide a final response to the Loss Mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial by filing a Mortgage Loan Modification Report. Any denial shall state specific reasons for a denial.
2. Upon acceptance of the Debtor(s) in any Trial Period Plan and before the first trial period payment is due, Debtor(s)’ Counsel shall submit a proposed Order Approving Trial Period Plan for consideration and approval by the Court.
3. **Other requirements set forth in Chambers Guidelines, which may include additional required steps and deadlines, are incorporated herein and shall be effective. Failure to adhere to the Order and Chambers Guidelines may subject parties and counsel to sanctions or other relief.**

It is further **ORDERED** that the parties must submit and seek Court approval of any final agreement providing for LM/MM using forms and procedures outlined in Judge Waites’ Chambers Guidelines referenced above. Dismissal of the bankruptcy case, relief from the automatic stay as to the affected property, or reaffirmation of the debt shall not be a condition of loss mitigation, including modification of mortgage loan, unless allowed by the Court after consideration at a hearing; and it is further

**ORDERED** that, absent entry of a Consent Order Approving Loss Mitigation/Mortgage Modification, a final report must be submitted within thirty (30) days of the expiration of LM/MM efforts; and it is further

**ORDERED** that the Mortgage Creditor, via counsel, is ordered to inform the Court, the Debtor(s), Debtor(s)’ Counsel, the Trustee, and any participating co-borrower or obligor if the applicable loan is sold or securitized to another company during the LM/MM process within 7 days of the transfer. The transferee or new servicer of the loan shall be advised of these requirements by the original Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Mortgage Creditor shall transfer the Portal account to the transferee so that the transferee may review all previously submitted transmissions and continue with the process.

**ORDERED** that Debtor(s)’ Counsel, in consideration for assisting the Debtor(s) with the LM/MM process and in addition to any other fees charged in connection with the case, shall be permitted to charge an additional attorney's fee of $1,700. Said fee shall be paid in a manner described below and reflected in a fee disclosure **[select applicable provision and include only that provision in the order]**:

The Debtor(s) shall pay $1,700 or such other agreed upon amount directly to Debtor(s)’ Counsel outside of the bankruptcy in accordance with a separate fee or retainer agreement. If Debtor(s) fail to make such payment, Debtor(s)’ Counsel is authorized to file a request for supplemental fees to seek payment through the Chapter 13 Plan;

Debtor has or shall pay a partial payment of $\_\_\_ directly to Debtor(s)’ Counsel outside of the bankruptcy, leaving a balance of $\_\_\_\_\_to be paid from the Chapter 13 Plan.

The entire fee of $1,700 shall be paid to Debtor(s)’ Counsel from the Chapter 13 Plan.

Other: (to be completed by Debtor(s)’ counsel and subject to Court approval)

**IT IS FURTHER** **ORDERED** that should the Debtor(s) at any time fail to meet a payment obligation as described above, regardless of whether it is a direct payment to the attorney or a plan payment to the Trustee, Debtor(s)’ counsel may report that failure to the Court by correspondence and request to be relieved from further obligation of LM/MM assistance.

**AND IT IS SO ORDERED.**

**EXHIBIT L**

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

|  |  |
| --- | --- |
| IN RE:  DEBTOR NAME,  Debtor(s). | C/A No. CASE NUMBER  Chapter 13 ORDER APPOINTING MEDIATOR |

This matter comes before the Court upon the entry of an Order Requiring Loss Mitigation/Mortgage Modification addressing the loss mitigation/mortgage modification (LM/MM) efforts between Debtor and CREDITOR’S NAME (“Mortgage Creditor”).

To aid in the efficient resolution of LM/MM and to avoid delay, the Court finds that LM/MM mediation is necessary. Therefore, pursuant to Chambers Guidelines (“Operating Order”), the Court appoints a Mediator to mediate this matter. The name and contact information of the Mediator is reflected on the CM/ECF Docket. If the Mediator is unable to mediate this case, the Mediator shall notify the Court of the need for the appointment of another mediator no later than 3 days after the service of this Order.

The Mediator shall have 3 days from the entry of this Order to register to the portal at no cost, if the Mediator has not already done so. Debtor’s counsel, upon uploading the Debtor’s prepared package on the Portal, shall assign the Mediator to the account on the Portal so that the Mediator may review the file and have access to the account on the Portal.

The initial fees and costs for the Mediator **shall total $300.00,** [[21]](#footnote-21) which includes a one-hour of time mediation session (“Initial Mediation Session”), and should be equally divided by the parties and paid no later than seven days prior to the Initial Mediation Session by the parties unless otherwise ordered. This $300 compensation includes the Mediator’s review and monitoring of the case in the Portal as well as reporting to the Court. No later than 30 days after the entry of this Order, the Initial Mediation Session shall be conducted on a date set by the Mediator.

After the conclusion of the Initial Mediation Session, the parties and Mediator shall schedule a second one-hour mediation session (“Second Mediation Session”) to assist in facilitating the resolution of LM/MM efforts. If, prior to the scheduled Second Mediation Session, the parties have reached an LM/MM Agreement or are near completion of the LM/MM review to the satisfaction of all the parties, the parties may jointly request, no later than five days prior to the scheduled session, the Mediator cancel or reschedule the Second Mediation Session. The Mediator may cancel or reschedule the Second Mediation Session in his or her discretion. If the Second Mediation Session is not cancelled, the Mediator’s fees and costs for the Second Mediation Session **shall total $300.00**, and should be equally divided by the parties and paid no later than 7 days prior to the scheduled Second Mediation Session. This $300 compensation includes the Mediator’s additional review and monitoring of the case in the Portal as well as the additional reporting to the Court.

After the conclusion of the Second Mediation Session, if a further mediation session is needed to facilitate the resolution of a LM/MM dispute or issue, the parties, with the approval of the Mediator, may agree to an additional one-hour mediation session, which will be held on a date set by the Mediator. The Mediator shall report the additional mediation session and the arrangements of the Mediator’s additional compensation to the Court.

All mediation sessions shall be attended by the Debtor(s), Debtor(s)’ counsel, a representative of the Mortgage Creditor with LM/MM authority and counsel for the Mortgage Creditor via telephone on a conference call established by Debtor(s)’ Counsel. Debtor(s)’ Counsel shall publish the phone number to the Portal no later than 3 days before the scheduled mediation session. Upon completion of the mediation sessions, the Mediator shall advise the Court in writing that the session has occurred, the date of the session, whether the issues were settled in whole or in part, and whether a further hearing is required.

At the mediation sessions, the parties and their counsel shall be prepared to participate in a mutual, good faith LM/MM discussions.

The Mediator shall periodically monitor the Portal communications to ensure that each party is performing its obligations and duties as required under the guidelines, including without limitation:

Confirming that the Debtor has timely provided the Debtor’s Prepared Package;

Facilitating the communication and document exchanges between the parties to ensure the LM/MM is proceeding in a timely fashion;

Monitoring the deadlines for each party;

Preparing for, scheduling and conducting the mediation sessions; and

Reporting to the Court of any non-compliance with the terms of the Operating Order and the conclusion and results of the LM/MM review.

The failure of any party or counsel to cooperate or otherwise comply with the provisions of this order shall be reported to the Court by the Mediator.  An expedited hearing before the Court may be requested by the Mediator or any other party on issues not resolved by mediation. The Mediator may also request the Court hold a Status Hearing on the LM/MM.

This order shall be served by Debtor(s)’ counsel on the Mediator and the Mortgage Creditor and its counsel (if known). Counsel shall be responsible for notifying and ensuring the presence of parties at the mediation sessions.

**AND IT IS SO ORDERED**

1. **References herein to the Court shall mean Judge Waites only.** [↑](#footnote-ref-1)
2. The deadlines and requirements set forth herein are not intended to extend any deadlines or preempt requirements set forth by applicable non-bankruptcy law, including but not limited to regulations promulgated by the Consumer Financial Protection Bureau (“CFPB”). [↑](#footnote-ref-2)
3. **Other than the requirement that the Court approve the final LM/MM by Order, these procedures are not applicable to debtor accepted Streamlined Modifications, which by definition are offers from mortgage lenders or servicers without the need for the Debtor(s) to submit any documentation or financial information to obtain approval.** Streamlined Modifications include but are not limited to FNMA Streamlined Modifications, FHLMC Streamlined Modifications, Streamlined HAMP modifications, and other similar federally sponsored programs/initiatives. A Streamlined Modification may be approved by the Court through the submission of a proposed ***Consent Order Approving Mortgage Modification*** using the form attached as Exhibit R, using the CM/ECF event, *Proposed Consent Order Approving LM/MM*. [↑](#footnote-ref-3)
4. DMM is identified as the Portal provider due to its experience and reasonable cost ($40 for each Debtor(s)’ Prepared Package and $40 for the portal submission by the Debtor(s)). Registration for portal use can be completed online at <https://www.dclmwp.com> or by contacting DMM at 1-800-481-1013. The Court may, upon application and review, approve other service providers. [↑](#footnote-ref-4)
5. The mediation is designed to have a limited focus and be low cost. However, parties may request an exemption from the appointment of an LM/MM mediator by filing a separate motion seeking such relief. Any motion requesting an exemption from the appointment of an LM/MM mediator must be supported by good cause, and the cost of the mediator alone shall not constitute sufficient good cause. Upon the Court’s determination that a motion is sufficiently supported, a definite hearing on the request for an exemption from the appointment of an LM/MM mediator will be scheduled. [↑](#footnote-ref-5)
6. Counsel filing the Debtor(s)’ case shall be presumed to be counsel for LM/MM efforts unless special counsel with expertise in LM/MM is employed by the Debtor(s) with notice to the Court using the ***Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation*** form attached as **Exhibit** **M.** The ***Limited Notice of Appearance, Request for Notice and Disclosure of Compensation*** should be filed using the CM/ECF event, *Limited Notice of Appearance for LM/MM & Request for Notice*. In the event that the no-look fee for LM/MM purposes is to be paid to separate counsel from the attorney representing the Debtor(s) in the filing and administration of the bankruptcy case, the attorneys’ fees to each shall be paid in equal amounts in each distribution from the Trustee, unless otherwise agreed by counsel. [↑](#footnote-ref-6)
7. For an additional fee, DMM may offer assistance for debtors who are otherwise unrepresented in using the Portal. [↑](#footnote-ref-7)
8. If the Debtor(s) intend to pursue LM/MM while concurrently treating the Mortgage Creditor’s secured claim under 11 U.S.C. § 1322(b)(3) or (5), Debtor(s) should propose the following non-standard language in the Chapter 13 plan in lieu of the language in paragraphs e (1) or e (2):

   *In addition to the treatment of* ***NAME OF MORTGAGE CREDITOR****’s secured claim addressed above, Debtor(s) will also seek loss mitigation and a consensual mortgage modification via the Portal process set forth in Chamber’s Guidelines.* [↑](#footnote-ref-8)
9. The LM/MM process should be commenced before discharge of the Debtor(s) and in time to allow completion of the procedures before the case is closed. [↑](#footnote-ref-9)
10. The ***Notice and Motion for Loss Mitigation/Mortgage Modification*** and proposed ***LM/MM Order*** should be filed using the *Loss Mitigation/Mediation* CM/ECF event.

    As an alternative to filing a Notice and Motion for Loss Mitigation/Mortgage Modification, Debtor and Mortgage Creditor may agree to commence the LM/MM process by submitting a proposed Consent Order Requiring Loss Mitigation/Mortgage Modification, using the form attached as Exhibit K with the following modifications:

    Change title of order to “Consent Order Requiring Loss Mitigation/Mortgage Modification.”

    Replace the first paragraph of the order with the following: “This matter comes before the Court upon the agreement of the Debtor(s) and [Creditor Name] to participate in the Loss Mitigation/Mortgage Modification Portal Program. With the consent of the parties, it is hereby”

    Include consent signatures at the end of the order.

    The proposed order should be filed using the *Proposed Consent Order Requiring LM/MM (no motion filed)* CM/ECF event.

    **If a motion for relief from the § 362 stay is resolved by including a provision that the parties will participate in a LM/MM Portal review, the parties should submit a proposed Consent Order Requiring Loss Mitigation/Mortgage Modification at the same time that the proposed § 362 settlement agreement is submitted to the Court.** [↑](#footnote-ref-10)
11. In order to ensure timely responses to inquiries from the Court, the Mortgage Creditor’s designated counsel shall be deemed to be the attorney who has filed the most recent pleading in the case on behalf of the Mortgage Creditor unless another attorney is designated as counsel for LM/MM through the filing of a Notice of Appearance. [↑](#footnote-ref-11)
12. Enter **scbkdocs40** for the $40.00 rate. DMM also offers a DocuPrep program through which it directly assists the Debtor(s) in completing the Debtor(s)’ Prepared Package (for a fee charge of approximately $200.00). [↑](#footnote-ref-12)
13. Debtor(s)’ Counsel who are experienced with LM/MM and with the use of the Portal may request by motion, stating grounds with specificity, to be exempted from using the Document Preparation Program. ***Pro se* Debtors must use the Document Preparation Program**. [↑](#footnote-ref-13)
14. The expiration of the 90-day Loss Mitigation period or any extension thereof does not terminate the requirements of the LM/MM Order or conclude the LM/MM process. All parties remain obligated to act in good faith and to continue the LM/MM review until its final conclusion. [↑](#footnote-ref-14)
15. The ***Mortgage Loan Modification Report*** should be filed using the CM/ECF event of the same name. [↑](#footnote-ref-15)
16. The proposed ***Order Approving Trial Period Plan***should be filed using the CM/ECF event, *Proposed Order Approving Trial Period Plan.* [↑](#footnote-ref-16)
17. The proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification*** should be filed using the CM/ECF event, *Proposed Consent Order Approving LM/MM.* [↑](#footnote-ref-17)
18. Unrepresented Mortgage Creditors may submit correspondence to chambers by e-mail to jwaites\_prose@scb.uscourts.gov, with copy provided to Debtor(s)’ Counsel and the Trustee. [↑](#footnote-ref-18)
19. The proposed order should be titled “Order Granting Relief from Stay as to [Mortgage Creditor Name] Only” and should be filed using the CM/ECF event, *Proposed Order.* [↑](#footnote-ref-19)
20. The Portal is available at <https://www.dclmwp.com>. [↑](#footnote-ref-20)
21. In the event of a settlement of issues before any mediation session takes place, the Mediator is entitled to fees for time spent in preparation for mediation at the hourly rate of $300/hour, but such fee request shall not exceed $600.00 without Court order. If the Mediator contemplates that additional time would be required due to the unusual circumstances of the matter, the Mediator may request that the Court set an additional fee amount, after notice to the Debtor(s) and Mortgage Creditor. [↑](#footnote-ref-21)