

**HIGHLIGHTS OF LOSS MITIGATION/MORTGAGE MODIFICATION PROGRAM  
IN JUDGE WAITES' CASES  
(VIA THE PORTAL)  
4/9/2015**

- The Portal process is the exclusive method allowed for loss mitigation/mortgage modification (“LM/MM”).
  - Procedures set forth parties’ affirmative duty to timely report LM/MM efforts to Court.
  - Court approval of Trial Payment Plan and final agreement must be obtained.
  - Non-Portal efforts require consideration at a hearing attended by all parties and counsel.
- The assembly of documents necessary for LM/MM consideration is required before filing of Notice & Motion for LM/MM.
- The procedures provide several options for payment of additional no-look attorney’s fees for counsel assisting the Debtor with LM/MM.
- Inexpensive mediation may be requested to facilitate the process.
- Use of the LM/MM procedures is allowed in Chapter 13 cases both before and after confirmation (where reservation language is included in the confirmed plan), and in Chapter 7 and 11 cases.
- Use of the LM/MM procedures is not limited to home mortgages.
- Standard language providing for LM/MM may be used to obtain confirmation of a Chapter 13 plan.

### BRIEF SUMMARY OF PORTAL PROCEDURES

1. Debtor's Counsel determines that LM/MM is feasible.
2. LM/MM language may be included in a Chapter 13 plan (if pursuing LM/MM pre-confirmation) or a reservation of rights to pursue LM/MM may be included in a Chapter 13 plan (if the Debtor may pursue LM/MM post confirmation).
3. Prepare LM/MM documents (Debtor's Prepared Package)
  - Necessary documents can be prepared electronically via [www.documods.com](http://www.documods.com).
  - If assistance is needed to complete documents, DMM offers a DocuPrep program through which it directly assists the Debtor in completing necessary documents for a \$200 fee. Debtor's Counsel arranges the Debtor's conference time for DocuPrep.
4. File & Serve Notice and Motion for LM/MM or file Consent Order Requiring LM/MM.
5. If no objection, Order Requiring LM/MM will be entered.
6. Debtor's Counsel registers for Portal & serves Order Requiring LM/MM on affected parties & files Certificate of Service.
7. Mortgage Creditor registers on Portal.
8. Debtor's Counsel uploads Debtor's Prepared Package to Portal.
9. Mortgage Creditor acknowledges receipt of Debtor's Prepared Package, assigns its counsel to the Portal, provides contact info to Debtor, and notifies Debtor's Counsel if additional info is needed.
10. Mortgage Creditor has 120 days to conclude its consideration of LM/MM and provide a final response.
11. If Debtor is accepted into a Trial Period Plan, Debtor's Counsel files proposed Interim Order Granting Approval of Trial Period Plan.
12. If LM/MM is denied or Debtor fails to complete Trial Period Plan, one of the parties files a Mortgage Loan Modification/Loss Mitigation Report to advise Court of denial/failure of LM/MM.
13. If an agreement to permanently modify the mortgage is reached, a Consent Order Allowing Mortgage Modification is filed.
14. Mortgage Creditor delivers all necessary documents to execute modification to Debtor's Counsel.

**LOSS MITIGATION/MORTGAGE MODIFICATION  
AND MEDIATION PROGRAM**

Loss mitigation/mortgage modification affects case administration, property of the estate, litigation before the Court, and the Debtor's payment obligations/distributions to creditors. Therefore, individuals in bankruptcy cases assigned to Judge Waites,<sup>13</sup> including joint debtors, who seek consensual modifications of mortgage loans or other types of loss mitigation shall submit such modifications for court consideration as follows:<sup>14</sup>

**1. General Responsibilities in all Cases.**

- a. Debtor's counsel shall review the requirements of these Guidelines with each Debtor who is considering loss mitigation/mortgage modification during a bankruptcy case.
- b. The party seeking loss mitigation/mortgage modification during a bankruptcy case shall timely advise the Court by motion. Until such a motion is filed, the Debtor, Debtor's Counsel, Trustee & the affected Mortgage Creditor, and counsel, if any, shall have an affirmative duty to **immediately advise** the Court by correspondence (filed on the Court's docket) of all loss mitigation/mortgage modification efforts occurring during the case. Notification to the Court by one party suffices as notice required above.
- c. The Debtor, through counsel, shall seek approval by the Court of the terms of any Trial Period Plan utilizing **Exhibit L**.
- d. The Debtor, through counsel, and the affected Mortgage Creditor shall seek approval by the Court of the terms of **any final loss mitigation/mortgage modification agreement** according to paragraph 7 below.
- e. The Debtor, through counsel, shall report to the Court the denial of loss mitigation/mortgage modification efforts utilizing **Exhibit J**.
- f. Counsel for the Debtor and the affected Mortgage Creditor shall have an affirmative duty to report the status of all loss mitigation/mortgage modification efforts, if any, when requesting a continuance or delay in any case proceedings affected by those efforts.

**2. Loss Mitigation/Mortgage Modification Portal.** The Portal identified herein and related procedures provide a mechanism for secure, real time, transparent communication with reasonable time deadlines, mediation, and Court oversight. For these reasons, and absent an order otherwise, the Portal and related procedures are the **exclusive method** for seeking loss mitigation/mortgage modification in bankruptcy cases before Judge Waites.

**3. Responsibilities of Debtor's Counsel.** Absent approval otherwise by the Court, the Debtor's participation in all loss mitigation/mortgage modification efforts through the Portal (including the submission of documents, communication and negotiation) shall be through counsel. Counsel filing the Debtor's case shall be presumed the counsel for these efforts unless separate special counsel is employed as indicated by the filing of **Exhibit K**.

---

<sup>13</sup> **References herein to the Court herein shall mean Judge Waites only.**

<sup>14</sup> The term "loss mitigation" is intended to describe the full range of solutions that may avert the loss of a debtor's home to foreclosure, promote communication between parties, and reduce costs; for example, loan modification or refinance, forbearance, short sale or surrender of property in satisfaction of debt.

4. **Portal Procedures.** The procedures for participation in the Loss Mitigation/Mortgage Modification through the Portal are as follows:

- a. Prior to the filing of the Notice and Motion for Loss Mitigation/Mortgage Modification (attached as **Exhibit H**) by the Debtor, if seeking mortgage modification, Debtor's Counsel shall:
  1. Determine that mortgage modification is feasible—with the Debtor typically required to devote 31% of his gross monthly income, less any homeowners association fee, to repayment of the mortgage (which would include principal + interest + taxes + insurance + assessments) **or** such different amount designated by the applicable Mortgage Creditor; and
  2. Use the Court's approved online document preparation program (the "Document Preparation Program") to prepare the standard loan modification/loss mitigation forms (the "Debtor's Prepared Package") to expedite the exchange of information between the Debtor and the Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation.<sup>15</sup> The Debtor's Prepared Package is completed through [www.documods.com](http://www.documods.com).<sup>16</sup>
- b. **Chapter 13 cases:** Once the steps described above are complete, Debtor's Counsel shall serve on the Mortgage Creditor, co-borrowers or obligors on the applicable loan, and their counsel, if known, and file with the Court, a Notice and Motion for Loss Mitigation/Mortgage Modification according to the form attached as **Exhibit H**.<sup>17</sup>

The Notice and Motion must indicate the results of any previous loss mitigation/mortgage modification efforts during the course of the bankruptcy case or a prior bankruptcy case.

The filing of the Notice and Motion is not required if the parties agree by consent order to use the Portal as the means of considering loss mitigation/mortgage modification.<sup>18</sup>

For pre-confirmation motions, the notice and motion should be served no later than 20 days after the filing of a Chapter 13 plan unless extended by the Court. If the Loss Mitigation/Mortgage Modification process is not likely to conclude before the confirmation hearing, the Debtor should consider the use of the plan language in paragraph no. 5 (below).

---

<sup>15</sup> The online document preparation systems and portal described herein are provided by Default Mitigation Management, LLC ("DMM"). DMM is identified for use due to its experience and reasonable cost (\$40 for each Debtor's Prepared Package and \$40 for the portal submission by each party). Free training on the use of the portal provided by DMM is available to attorneys licensed for practice in this Court and all Mortgage Creditors. 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 in which event such providers shall be listed on the Court's website.

<sup>16</sup> Enter **scbkdocs40** for the \$40.00 rate. DMM also offers a DocuPrep program through which it directly assists the Debtor in completing the Debtor's Prepared Package (for a fee charge of \$200.00). Use of the DocuPrep program is not required by the Court.

<sup>17</sup> The Court may order use of the Loss Mitigation/Mortgage Modification Portal *sua sponte* or upon the parties' agreement in order to benefit case administration.

<sup>18</sup> In which instances, a consent order according to the form attached as **Exhibit I** may be submitted (but the references to the Notice and Motion should be deleted from the form).

For post confirmation motions, there is no deadline for the filing of the Notice and Motion, but it should be filed in time to allow completion of the procedures before case closing. In addition, nonstandard language reserving the right to seek Loss Mitigation/Mortgage Modification via the Portal should be included in the plan.

- c. **Chapter 7 or 11 Cases:** The Notice and Motion for Loss Mitigation/Mortgage Modification should be filed before discharge of the Debtor and in time to allow completion of the procedures before case closing. If the Notice and Motion for Loss Mitigation/Mortgage Modification is to be filed in a Chapter 11 case after confirmation of the plan, language reserving the right to seek Loss Mitigation/Mortgage Modification via the Portal should be included in the plan.
- d. The affected Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Notice and Motion to object. Any objection must state specific reasons verified as accurate by counsel for the objecting party. 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, an Order Requiring Loss Mitigation/Mortgage Modification (hereinafter, “the Order”).
- e. Debtor’s Counsel shall timely serve the Order on affected parties and file a Certificate of Service. Once the Order is issued, all communication between the parties regarding the loss mitigation review should be sent through a secure portal for document exchange. DMM provides a secure portal at <https://www.dclmwp.com> (“Portal”). Following entry of an Order Requiring Loss Mitigation/Mortgage Modification, Debtor’s Counsel shall immediately register on the Portal.<sup>19</sup>
- f. Within 7 days after entry of the Order, the Mortgage Creditor (if not previously registered on the Portal) shall register to use the Portal 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 Loss Mitigation. Debtor’s Counsel shall report, by correspondence filed on the Court’s docket, any failure to timely register to use the Portal.
- g. No later than 14 days after the entry of the Order, Debtor’s Counsel shall:
  1. Upload the Debtor’s Prepared Package as well as any other forms required by the Mortgage Creditor to the Portal; and
  2. Remit any required fees to DMM or other portal provider.
- h. The Mortgage Creditor shall, within 7 days after Debtor’s Counsel has submitted the Debtor’s Prepared Package and any additional required documentation to the Portal:
  1. Acknowledge receipt of the information on the Portal;
  2. Provide on the Portal all contact information of the representative in charge of the Debtor’s account;
  3. Assign to the Portal the Mortgage Creditor’s designated counsel;<sup>20</sup> and
  4. Notify Debtor’s Counsel of any additional or updated information required to process the application.

---

<sup>19</sup> Failure to timely register or other unexcused delay by any party or counsel will result in a hearing being scheduled to consider sanctions, including attorney’s fees.

<sup>20</sup> In order to ensure timely responses to inquiries from the Court, the Mortgage Creditor’s designated counsel shall be the attorney who files a notice of appearance in the case or any motion, objection or other document on behalf of the Mortgage Creditor.

- i. The Mortgage Creditor shall have a total of 120 days from entry of the Order 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.
- j. **Debtor's Counsel and counsel for the affected Mortgage Creditor shall immediately report to the Court through correspondence filed on the Court's docket any failure to timely act by any party of any of the requirements in these procedures.**
- k. At any time after the Order is issued, any party may request, or the Court may direct, the *ex parte* appointment of a mediator to facilitate discussions and resolve disputes raised by the parties.<sup>21</sup> Costs for a mediator shall not, without Court order, exceed \$500.00 for two one-hour sessions, and shall be equally divided and paid in advance of the session by the parties unless otherwise ordered. In the event a mediator is appointed, the mediator shall have 5 days to register to the Portal at no cost. Once registered, Debtor's Counsel 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. Each mediation session shall be conducted on a date set by the mediator via telephone on a conference call established by Debtor's Counsel, and last no longer than one hour. Debtor's Counsel shall publish the phone number to the Portal no later than 3 days before the scheduled mediation. An expedited hearing before the Court may be requested by any party on issues not resolved by mediation.
- l. The Mortgage Creditor is obligated to inform the Court, the Debtor, Debtor's Counsel, and any participating co-borrower or obligor within 7 days if the loan is sold or securitized to another company during the Loss Mitigation/Mortgage Modification process. The transferee or 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 transferee may review all previously submitted transmissions and continue with the process.
- m. Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel **shall** timely submit a proposed order according to **Exhibit L** for consideration and approval by the Court.
- n. Counsel assisting the Debtor with the Loss Mitigation/Mortgage Modification Program shall be permitted to charge an attorney's fee for services provided under this Program. In Chapter 13 cases, a **\$1500** no-look fee shall be allowed in addition to the no-look fee established under the Guidelines for compensation for professionals, with **\$1000** of that fee allowed to be distributed in the initial distribution by the Trustee or paid directly by the Debtor from post petition income or exempt assets. The manner of payment of the no-look fee for loss mitigation/mortgage modification may be addressed in the Order Requiring Loss Mitigation/Mortgage Modification. See **Exhibit I**. The fee provides additional compensation for all services through the completion of the Loss Mitigation/Mortgage Modification process and includes:
  - a. Assembling and submitting Debtor's Prepared Package;
  - b. Filing of the Notice and Motion for Loss Mitigation/Mortgage Modification and proposed Order;
  - c. Filing of other required pleadings and preparation of proposed orders, as applicable;
  - d. Communicating with the Mortgage Creditor, co-borrower or obligor, and the Mediator;

---

<sup>21</sup> In such instance, the no look fee discussed in paragraph **n** below may be increased.

- e. Filing of the proposed Interim Order Granting Approval of Trial Period Plan, Consent Order Allowing Mortgage Loan Modification, or a Mortgage Loan Modification/Loss Mitigation Report.

\$1000 of the no-look fee shall be deemed earned and payable after the filing of an Attorney Fee Disclosure Statement and upon completion of the submission of all documents necessary for consideration of loss mitigation/mortgage modification. The remaining portion of the no-look fee shall be deemed earned and payable upon submission of an Order Approving Trial Period Plan (attached as **Exhibit L**), Mortgage Loan Modification/Loss Mitigation Report (attached as **Exhibit J**), or Consent Order Allowing Mortgage Loan Modification described in paragraph 7.

As an alternative to the no-look fee, an application seeking additional compensation may also be submitted for expedited consideration.

Special counsel with expertise in the Loss Mitigation/Mortgage Modification Program may be employed by the Debtor with notice to the Court using the form attached as **Exhibit K**.<sup>22</sup>

- 5. **Within a Chapter 13 plan**: In addition to obtaining an Order Requiring Loss Mitigation/Mortgage Modification and in order to avoid delay in confirmation and distribution to creditors, the use of the Loss Mitigation/Mortgage Modification Program may also be evidenced by a Chapter 13 Plan, subject to objection.

If the Chapter 13 Plan does not expressly provide for loss mitigation/mortgage modification under the options stated below, post confirmation efforts via the Portal may be preserved by nonstandard language reserving such rights.<sup>23</sup>

If loss mitigation/mortgage modification has been allowed by order or is contemplated in the Chapter 13 Plan, the Plan may include the following language:

- a. Option One (The Debtor is capable of making regular contract payments or adequate protection payments)

According to an Order Requiring Loss Mitigation/Mortgage Modification and no less than 7 days before the confirmation hearing, the Debtor, acting through Debtor's Counsel, will submit a complete application to [Mortgage Creditor] seeking loss mitigation or a consensual modification of the Debtor's mortgage loan through an applicable program, such as the Home Affordable Modification Program (HAMP). The subject mortgage loan is secured by real property located at:

[Real Property Description]

Beginning on [date], the Debtor will pay either  regular contract payments or  adequate protection payments in the amount of \$\_\_\_\_\_ directly to [Mortgage Creditor]. The Debtor will also be responsible for payment of any arrearage directly to [Mortgage Creditor] if not

---

<sup>22</sup> In the event that the no-look fee for Loss Mitigation/Mortgage Modification purposes is to be paid to separate counsel from the attorney representing the Debtor in the filing and administration of the bankruptcy case, the attorneys' fees shall be paid in equal amounts in each distribution from the Trustee, unless otherwise agreed by counsel.

<sup>23</sup> Without reservation language, post confirmation loss mitigation/mortgage modification efforts may require a modified plan.

cured through a loss mitigation or loan modification process. No payment will be made by the Trustee on this secured claim.

Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel shall submit a proposed Interim Order Approving Trial Period Plan.<sup>24</sup> Upon completion of the Trial Period Plan and/or when seeking final approval of the loss mitigation/mortgage modification, Debtor's Counsel shall submit a proposed Consent Order Allowing Mortgage Modification. If the loss mitigation or loan modification request is denied, Debtor's Counsel shall timely file a Mortgage Loan Modification/Loss Mitigation Report indicating that denial with the Court.

b. Option Two (The Debtor is unable to make payments)

The Debtor is unable to resume payments to [Mortgage Creditor] at this time, and therefore, the Debtor's plan relies upon loss mitigation or a consensual mortgage loan modification.

According to an Order Requiring Loss Mitigation/Mortgage Modification and no less than 7 days before the confirmation hearing, the Debtor, acting through Debtor's Counsel, will submit a complete application to [Mortgage Creditor] seeking loss mitigation or a consensual modification of the Debtor's mortgage loan through an applicable program, such as the Home Affordable Modification Program (HAMP). The subject mortgage loan is secured by real property located at:

[Real Property Description]

Upon acceptance of the Debtor in a Trial Period Plan, Debtor's Counsel shall submit a proposed Order Approving Trial Period Plan,<sup>25</sup> and the Debtor will commence payments directly to [Mortgage Creditor] in an amount equal to the payment called for under the Trial Period Plan of the applicable modification program.

If the mortgage loan modification is approved, the Debtor 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. Upon completion of the Trial Period Plan or to seek final approval of the loss mitigation/mortgage modification, Debtor's Counsel shall submit a proposed Consent Order Allowing Mortgage Modification. If the loss mitigation or loan modification request is denied, Debtor's Counsel shall timely file a Mortgage Loan Modification/Loss Mitigation Report indicating that denial with the Court.

In the event that (1) the request for mortgage loan modification (and any necessary documentation) is not submitted or is denied or (2) the Debtor fails to timely make the above referenced Trial Period Plan Payments, the Mortgage Creditor may, after 10 days' written notice to the Debtor, 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 loss mitigation or mortgage modification is concluded and reported to the Debtor and Debtor's Counsel.

---

<sup>24</sup> Using Form attached as **Exhibit L**.

<sup>25</sup> Using Form attached as **Exhibit L**.



6. **Order Approving Trial Period Plan.** Upon acceptance of the Debtor in a Trial Period Plan, an Order for Approval shall be submitted to the Court using the form attached as **Exhibit L**.
7. **Consent Order Required for Final Approval of Loss Mitigation/Mortgage Modification:**
  - a. Any **final agreement** for loss mitigation or mortgage modification **shall** be submitted for approval by the Court by way of a proposed Consent Order Allowing Mortgage Loan Modification, which specifies the terms of the loss mitigation or modification agreement and includes in its provisions:<sup>26</sup>
    1. That there will be no extension of additional funds beyond what is already owed;
    2. That payments to other lien holders under the Plan will not be affected;
    3. That the proposed modification has no detrimental effect on other creditors and is believed to be in the best interest of the debtor(s) and the estate;
    4. Whether any payments from the Chapter 13 Trustee to the Mortgage Creditor whose loan is to be modified will continue or terminate upon entry of the order;
    5. Whether relief from the automatic stay has been previously granted to any secured creditor on the property affected by the Loss Mitigation/Mortgage Modification;
    6. A statement setting forth or attaching a short summary of the specific benefits received as a result of Loss Mitigation or mortgage modification, including deferral or forgiveness of arrearage/debt or change in interest rate, term, or payment amount; and
    7. In Portal cases, the Debtor certifies that the costs of DMM have been previously paid by the Debtor (or name other source) and the attorney's fees specifically attributable to services required in the use of the Loss Mitigation/Mortgage Modification Program have been previously paid by the Debtor or will be paid through the Trustee's distributions.
  - b. Within 60 days after entry of the Consent Order Allowing Mortgage Loan Modification, the Mortgage Creditor shall deliver all documents necessary to complete the permanent modification to Debtor's Counsel. Upon the Mortgage Creditor's failure to comply, the Debtor may file a Motion to Compel.
  - c. 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.
  - d. Dismissal of the bankruptcy case or relief from the automatic stay as to the affected property may not be a condition of loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at an actual hearing.

## **Reporting and Events**

Reports required by any of the above procedures shall be reported by filing the document attached as **Exhibit J**, using the CM/ECF event, *Mortgage Loan Modification Report*. The Notice and Motion for Loss Mitigation/Mortgage Modification should be filed using the *Loss Mitigation/Mediation* event. A

---

<sup>26</sup> If a final agreement is subject to the Debtor's successful completion of the Trial Period Plan, an order in the form of **Exhibit L** should be separately submitted. The consent order referenced in paragraph 7 shall be submitted only upon successful completion of the Trial Period Plan if such is required.

**EXHIBIT G**

**UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**CONSENT ORDER GRANTING RELIEF  
FROM STAY TO CONTINUE OR  
PURSUE ACTION IN FAMILY COURT**

This matter comes before the Court upon the request of \_\_\_\_\_ for an Order granting relief from the automatic stay provided under 11 U.S.C. § 362(a) to permit \_\_\_\_\_ to adjudicate the following actions in Family Court:

- Divorce
- Child Support
- Alimony
- Equitable Distribution of Marital Property & Debts
- Other \_\_\_\_\_

The parties consent to relief from the automatic stay. It is therefore,

ORDERED that relief from the automatic stay is granted to allow the Family Court to adjudicate the above-referenced actions and to accord such other relief as is appropriate under state law. However, additional relief from stay is necessary for the enforcement of a marital obligation against property of the estate or to hold the Debtor in civil contempt. Notwithstanding any determination by the Family Court, property of the estate may be subject to further order of this Court.

**AND IT IS SO ORDERED.**

**WE SO MOVE AND CONSENT:**

/s/ Attorney for Movant \_\_\_\_\_  
Attorney for Movant  
District Court I.D. \_\_\_\_\_

/s/ Attorney for Debtor \_\_\_\_\_  
Attorney for Debtor  
District Court I.D. \_\_\_\_\_

/s/Chapter 13 Trustee \_\_\_\_\_  
Chapter 13 Trustee

**EXHIBIT H**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

C/A No. \_\_\_\_\_

[Debtor Name],

Chapter \_\_\_\_\_

Debtor(s).

**NOTICE AND MOTION FOR LOSS  
MITIGATION/MORTGAGE  
MODIFICATION PURSUANT TO JUDGE  
WAITES' CHAMBERS GUIDELINES**

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

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

*[Identify the Property]*

*[Loan Number]*

*[Mortgage Creditor's Name and Address]*

The Debtor requests an order directing the parties to participate in the Loss Mitigation/Mortgage Modification Portal Program as set forth in Judge Waites' Chambers Guidelines, available at <http://www.scb.circ4.dcn/ChambersJW.htm>, and requiring the parties and counsel to use the mortgage modification portal operated by Default Mitigation Management, LLC while participating in Program.

Prior to filing this Motion, Debtor's Counsel completed the Debtor's Prepared Package and collected all of the required supporting documentation as required by the Document Preparation Software and is prepared to submit the supporting documentation along with the modification forms to the Portal.

Prior to filing this Motion, Debtor's Counsel has also determined that:

- The Mortgage Creditor is registered with the approved loss mitigation portal. 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 within 14 days after entry of the Order.
- The Mortgage Creditor is not registered. The Debtor requests that the Court require Mortgage Creditor to register with the Portal within 7 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 within 14 days after entry of the Order.

The Debtor  has or  has not previously sought loss mitigation/mortgage modification through any procedure/process during this or a prior bankruptcy case. List dates and case number(s): \_\_\_\_\_

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

**NOTE REGARDING THIS FORM:** If the debtor proposes a moratorium of plan payments as a means of allowing payment of the no-look fee attributable to loss mitigation/mortgage modification services, if the debtor seeks to pay Debtor's Counsel a \$2,000 initial distribution through the Chapter 13 plan, or if the debtor proposes to delay the resumption of regular mortgage payments, notice of such proposal shall be provided in this Notice and Motion for Loss Mitigation/Mortgage Modification and notice served on the affected mortgage creditor and the Chapter 13 Trustee.

**EXHIBIT I**

**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 was filed by [Debtor Name] (“Debtor”) on [Date] \_\_\_\_\_, 20\_\_ and the 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, it is hereby

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

**ORDERED** that the Debtor, Debtor’s counsel, the Mortgage Creditor and its counsel, and any participating co-borrower or obligor shall comply with the Loss Mitigation/Mortgage Modification Procedures set forth in Judge Waites’ Chambers Guidelines (available at [www.scb.uscourts.gov/ChambersJW.htm](http://www.scb.uscourts.gov/ChambersJW.htm)) and engage in the Loss Mitigation/Mortgage Modification 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, Debtor’s Counsel, and the Mortgage Creditor and its counsel shall observe the following deadlines:

- (1) Debtor’s Counsel shall immediately serve this Order on the applicable parties and register on the Portal.
- (2) If not previously registered, the Mortgage Creditor and its designated counsel shall, within seven (7) days, register for the Portal<sup>3</sup> and ensure that it has provided to the approved Portal provider all application forms and documentation requirements necessary for consideration of all types of Loss Mitigation, including mortgage modification.
- (3) Debtor’s Counsel shall upload the prepared mortgage modification package described in Chambers Guidelines to the Portal within fourteen (14) days after the entry of this Order.
- (4) Debtor’s Counsel and counsel for the affected Mortgage Creditor shall timely report to the Court any failure to timely act in accordance with the deadlines prescribed in this Order or Chamber’s Guidelines.

---

<sup>3</sup> The Portal is available at <https://www.dclmwp.com>.

- (5) Once the Order has issued, 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.
- (6) Within seven (7) days after the Debtor's submission to the Mortgage Creditor on the Portal, the Mortgage Creditor shall take the following actions on the Portal:
  - a. Acknowledge receipt of the Debtor's package;
  - b. Provide the Debtor and Debtor's Counsel with notice of any additional or updated documentation necessary for consideration of Loss Mitigation, including mortgage modification;
  - c. Assign its designated counsel to the account on the Portal; and
  - d. Provide the name, address and direct telephone number of the person responsible for the review on the Portal.
- (7) A mortgage modification or other form of loss mitigation shall be agreed to or denied within 120 days of the entry of this Order unless extended by this Court.
- (8) **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 participation in any Trial Period Plan and, separately, any final agreement providing for any loss mitigation/mortgage modification using forms and procedures outlined in Judge Waites' Chambers Guidelines referenced above. Loss Mitigation, including modification of the mortgage loan, may not be conditioned upon dismissal of the bankruptcy case or relief from the automatic stay, unless allowed by the Court after an actual hearing; and it is further

**ORDERED** that, absent entry of a Consent Order Allowing Mortgage Loan Modification, a final report must be submitted within thirty (30) days of the expiration of the Loss Mitigation efforts and no later than 180 days after the entry of this Order; and it is further

**ORDERED** that Debtor's Counsel, in consideration for assisting Debtor with the Mortgage Modification/Loss Mitigation 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 \$1,500. 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**]:

- Debtor shall pay \$1,500 directly to Debtor's Counsel outside of the bankruptcy in accordance with a separate fee or retainer agreement;
- 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. Debtor's Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage

arrearage toward the attorney's fees,<sup>4</sup> or (b) in the event that the loan modification process has or will begin prior to confirmation of Debtor's plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;<sup>5</sup>

- The entire fee of \$1,500 shall be paid to Debtor's Counsel from the Chapter 13 Plan. Debtor's Counsel shall either (a) in the event that a plan has previously been confirmed, file a supplemental fee application under the expedited fee procedure in which case the Trustee shall apply any monthly distributions that would previously have been allocated for mortgage arrearage toward the attorney's fees, or (b) in the event that the loan modification process has or will begin prior to confirmation of Debtor's plan, increase the fees that are being paid through the plan by said remaining balance, with an increased initial disbursement of up to \$2,000 rather than the normal initial disbursement of \$1,000;<sup>6</sup>
- In a Chapter 13 plan, Debtor shall propose a moratorium of plan payments of \_\_\_\_ months (not to exceed 3), beginning with the first payment that comes due following the entry of this order, during which time Debtor shall directly pay Debtor's counsel \$\_\_\_\_\_ per month. Debtor shall resume regular plan payments to the Trustee in the month following the last month of the moratorium.<sup>7</sup>
- In a Chapter 13 plan, Debtor shall propose resuming regular monthly mortgage payments to be paid directly by Debtor beginning in the month of \_\_\_\_\_, 20\_\_\_\_, during which time Debtor shall pay installments of \$\_\_\_\_\_ per month directly to Debtor's Counsel beginning on \_\_\_\_\_, 20\_\_\_\_.
- Other: (to be completed by Debtor's counsel and subject to Court approval)

**IT IS FURTHER ORDERED** that should Debtor 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 shall report that failure to the Court by correspondence and is under no obligation to continue to assist Debtor with the mortgage modification or loss mitigation process.

**AND IT IS SO ORDERED.**

---

<sup>4</sup> The Trustee will only be required to pay attorney's fees out of the mortgage arrearage allocation at the time the Trustee ceases to make such payments to the mortgage lender, which would normally be at the time of entry of the final order for loss mitigation/mortgage modification or at the time of relief from the automatic stay.

<sup>5</sup> The increased initial disbursement of anything more than \$1,000 shall only apply in cases in which the plan payment is \$750 per month or higher.

<sup>6</sup> Debtor must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

<sup>7</sup> Debtor must provide notice that this relief is sought in Motion for Loss Mitigation/Mortgage Modification or by separate motion served upon the affected Mortgage Creditor. An order providing this manner of payment must include the consent of the Chapter 13 Trustee.

**EXHIBIT J**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**MORTGAGE LOAN  
MODIFICATION/LOSS MITIGATION  
REPORT**

Following efforts to negotiate loss mitigation/mortgage modification of the below described loan, the parties report that loss mitigation/mortgage modification was denied or has failed for the following reasons:<sup>1</sup>

Name of Mortgage Creditor: \_\_\_\_\_

Property Address: \_\_\_\_\_

Last Four Digits of Account Number of Loan (if multiple loans with same creditor): \_\_\_\_\_

Dated:                      Signature: \_\_\_\_\_

---

<sup>1</sup> Indicate if a Trial Period Plan was previously approved but was not successfully completed.



**EXHIBIT K**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**LIMITED NOTICE OF APPEARANCE,  
REQUEST FOR NOTICE, AND  
DISCLOSURE OF COMPENSATION**

The undersigned attorney files this Limited Notice of Appearance on behalf of [Debtor Name] (“Debtor”) in this case for the sole purpose of seeking Loss Mitigation/Mortgage Modification for Debtor. The undersigned further states that s/he will receive \$\_\_\_\_\_ compensation for this limited appearance to be paid through the Chapter 13 Trustee’s distribution or through direct payment by Debtor from post petition income or exempt assets. An attorney fee disclosure statement shall be filed upon the earning of the fee according to Chambers Guidelines.

\_\_\_\_\_  
Attorney Name & Fed. ID #

Address

Email

**CERTIFICATE OF SERVICE**

The above signing attorney certifies that on [date of service], a copy of the foregoing Limited Notice of Appearance, Request for Notice, and Disclosure of Compensation was served on the Debtor, the Chapter 13 Trustee and any affected creditor by first class U.S. Mail at the following addresses:

**EXHIBIT L**

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF SOUTH CAROLINA**

IN RE:

[Debtor Name],

Debtor(s).

C/A No. \_\_\_\_\_

Chapter \_\_\_\_

**INTERIM ORDER GRANTING  
APPROVAL OF TRIAL PERIOD PLAN**

This case came before the Court upon the Debtor(s)' Request to Approve Trial Period Plan with \_\_\_\_\_ ("the Mortgage Creditor"), and this Court having considered the matter

**ORDERS AS FOLLOWS:**

1. The request is granted.
2. The Trial Period Plan with the Mortgage Creditor is hereby approved and the parties are ordered to comply with the terms of the Trial Period Plan:
  - The Trial Period Plan is described in the attachments hereto **or**
  - The terms are as follows:
    - i. The Trial Period Plan Payments are in the amount of \$ \_\_\_\_\_, representing principal, interest, taxes and insurance beginning \_\_\_\_\_, 20 \_\_\_\_.
    - ii. The payments will be sent to: [insert address]
3. Debtor's counsel shall timely submit for Court approval any final loss mitigation or mortgage modification agreement after the Trial Period Plan Payments are made.

**AND IT IS SO ORDERED.**

**APPROVAL REQUESTED BY:**

\_\_\_\_\_  
Attorney Name & Fed. ID #

Address

Email