

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

To be effective, all loss mitigation/mortgage modification (“LM/MM”) occurring during a bankruptcy case must be approved by the Court<sup>1</sup> using the following procedures.<sup>2</sup> 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”).<sup>3</sup>

**I. Order Regarding Procedures for Loss Mitigation/Mortgage Modification**

- a. **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.
- b. **Service of Order.** If Debtor(s) are contemplating pursuing LM/MM during the pendency of a case, Debtor(s)’ Counsel or Debtor(s) (if proceeding without the assistance of counsel) shall timely serve a copy of the Order Regarding Procedures for Loss Mitigation/Mortgage Modification on the applicable Mortgage Creditor and file a certificate of service.

**II. LM/MM via the Portal (Preferred Method)**

- a. **LM/MM Portal.** The Portal is a secure web platform operated by Default Mitigation Management LLC (“DMM”), available at <https://www.dclmwp.com>.<sup>4</sup> 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 and exchange of documents.
- b. **LM/MM Mediation.** In Portal cases, a LM/MM Mediator shall be appointed upon request or upon the order of the Court to facilitate discussions between the parties and to assist in resolving any disputes.

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<sup>1</sup> **References herein to the Court shall mean Judge Waites only.**

<sup>2</sup> 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”).

<sup>3</sup> The procedures are applicable to all loan modifications with the exception of Streamlined Modifications. Streamlined modifications are offers from mortgage creditors or servicers without the need for the Debtor(s) to submit any documentation or financial information to obtain approval of a modification. Streamlined Modifications must be approved by the Court through the submission of a proposed **Consent Order Approving Mortgage Modification** using the form attached as [Exhibit V](#), using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

<sup>4</sup> 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.

**c. LM/MM Portal Procedures.**

- (1) Debtor(s) are encouraged to participate in LM/MM via the Portal with the assistance Debtor(s)' Counsel.<sup>5</sup> Debtors who seek to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks.<sup>6</sup> 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, as well as review LM/MM requirements with the Debtor(s).
- (2) If 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. When filing a proposed chapter 13 plan that includes the nonstandard plan language set forth below in Paragraph (e) (2) ("Option Two"), the Debtor(s) shall file the Notice of Motion for Loss Mitigation/Mortgage Modification within 21 days of the filing of the proposed chapter 13 plan. The failure to timely file the Notice and Motion for Loss Mitigation/Mortgage Modification may result in the denial of LM/MM.
- (3) If Debtor(s) provide for cure and maintain or other non-LM/MM treatment of a mortgage loan in the initial plan, Debtor(s) may reserve the right to later pursue LM/MM after confirmation by including the nonstandard reservation of rights language in the Plan (see Paragraph (e) (3)). In that instance, Debtor(s) may commence LM/MM through the filing of a Notice and Motion for Loss Mitigation/Mortgage Modification.<sup>7</sup>
- (4) To commence the LM/MM Portal process, Debtor(s)' Counsel shall file a ***Notice and Motion for Loss Mitigation/Mortgage Modification***,<sup>8</sup> using the form attached as [Exhibit N](#) ,

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<sup>5</sup> 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 Q](#). 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.

<sup>6</sup> For an additional fee, DMM may offer assistance for debtors who are otherwise unrepresented in using the Portal.

<sup>7</sup> 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.

<sup>8</sup> The ***Notice and Motion for Loss Mitigation/Mortgage Modification*** 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 O](#) with the following modifications:

1. Change title of order to "Consent Order Requiring Loss Mitigation/Mortgage Modification."
2. 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"
3. 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.

and serve on the applicable Mortgage Creditor, co-borrowers or obligors on the loan, and their counsel, if known.<sup>9</sup>

- a. 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 a 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 ***Order Requiring Loss Mitigation/Mortgage Modification (“LM/MM Order”)*** ([Exhibit O](#)).
- (5) Upon entry of the ***LM/MM Order***, Debtor(s)’ Counsel shall immediately register as an authorized user on the Portal if counsel has not already done so. In addition, Debtor(s)’ Counsel shall serve the LM/MM Order on the affected Mortgage Creditor within 2 days of the entry of the LM/MM Order and file a certificate of service.

**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 sanctions.

- (6) Within 7 days after service of the ***LM/MM Order***, the Mortgage Creditor shall register to use the Portal (if not previously registered) and ensure that the Portal provider has been provided with the standard application forms and documentation requirements necessary for consideration of all types of LM/MM available to Debtor(s).
- i. **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 transferred, 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, as a condition of the transfer, 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.
- (7) Within 28 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

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<sup>9</sup> 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.

Debtor(s)' Prepared Package to the Portal. Use of the Document Preparation Program, provided at [www.documods.com](http://www.documods.com),<sup>10</sup> 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.<sup>11</sup>

- i. To ensure that the Debtor(s)' Prepared Package is timely uploaded into the Portal, the Court will set a status hearing to be held after the entry of the LM/MM Order ("Initial Status Hearing") which will require attendance by Debtor(s) and Debtor(s)' Counsel unless Debtor(s)' Counsel indicates by a filed correspondence on CM/ECF that, prior to the hearing, a completed Debtor(s)' Prepared Package has been submitted via the Portal. Unless otherwise excused, Debtor(s)' or Debtor(s)' counsel's failure to appear at the Initial Status Hearing may result in the Court terminating the LM/MM Order.
- (8) Within 7 days after submission of the Debtor(s)' Prepared Package, the Mortgage Creditor shall:
- i. Acknowledge receipt of the Debtor(s)' Prepared Package on the Portal;
  - ii. Provide on the Portal all contact information of the non-attorney representative in charge of the Debtor(s)' account;
  - iii. Assign designated counsel for the Mortgage Creditor on the Portal; and
  - iv. State on the Portal any grounds for ineligibility or disqualification of the requested LM/MM that are not based on a current financial review of the Debtor(s).<sup>12</sup>

Within 14 days after the submission of the Debtor(s)' Prepared Package, the Mortgage Creditor shall complete an initial review of the Debtor(s)' entire Prepared Package and post in a single entry on the Portal any and all additional or updated final information needed for the immediate and complete consideration of the application. In addition, counsel for the Mortgage Creditor shall certify by a correspondence on CM/ECF ("Certification") that the Mortgage Creditor has complied with the requirements of this paragraph. A status hearing to be attended by a representative of the Mortgage Creditor and counsel for the Mortgage Creditor may be set to ensure of the Mortgage Creditor's filing of the Certification. The status hearing may be removed from the Court's calendar upon the filing of the Certification and Hearing Removal Request by counsel for the Mortgage Creditor no later than two days prior to the scheduled status hearing.

- (9) Upon the filing of the Certification by counsel for the Mortgage Creditor, the parties shall have 28 days to exchange and review all necessary documentation in order to submit a LM/MM application to the underwriter or other approving official for final approval. Unless the parties

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<sup>10</sup> Enter **sebkdocs40** 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).

<sup>11</sup> 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.***

<sup>12</sup> This requirement anticipates an early notification to Debtor(s) of certain disqualifying circumstances that are not based on a full financial review of the Debtor(s), including but not limited to: (1) the Mortgage Creditor does not offer LM/MM, (2) the Debtor(s) are not eligible for LM/MM due to prior loan modifications, and (3) the investor has not provided the servicer with authority to modify the loan. This requirement does not relieve the Mortgage Creditor from any possible sanctions or other liability resulting from the failure to comply with the reporting requirements of the Order Regarding Procedures for Loss Mitigation/Mortgage Modification, which is filed early in the pendency of a case.

deem the Debtor(s)' application to be complete during this 28-day period, counsel shall schedule a telephonic conference, attended by Debtor(s), Debtor(s)' counsel, counsel for the Mortgage Creditor, and the representative of the Mortgage Creditor with the most knowledge of Debtor(s)' LM/MM review, to discuss the necessary documentation and other outstanding items related to the LM/MM review.<sup>13</sup> If the parties are unable to complete this process by the 28-day deadline, counsel shall notify the Court by the filing of a correspondence on CM/ECF, and the Court may enter an order designating a mediator or schedule a status hearing on the LM/MM. If the Court designates a mediator, within seven days after that designation, the parties via counsel shall make payment of the mediation fees (totaling \$400, split evenly between the parties) to the mediator. Upon a party's failure to pay the mediator's fees, the mediator may cancel the mediation session and report the failure to the Court.

- (10) At any other time, upon the filing of a correspondence on CM/ECF requesting a mediator, or in the Court's discretion, a LM/MM mediator ("Mediator") may be appointed by the entry of an **Order Appointing LM/MM Mediator**. Any request for the appointment of a LM/MM mediator shall include the reasons that a mediator is necessary and indicate that the requesting party has deposited with its counsel the funds necessary to provide for the Mediator's fees (totaling \$400, split evenly between the parties). Counsel for the requesting party shall serve the Order Appointing LM/MM Mediator on the opposing party and its counsel 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 should be appointed.
- (11) A mediation shall be scheduled no later than 45 days of the Court's entry of the Order Appointing LM/MM Mediator on a date set by the Mediator<sup>14</sup> and shall be conducted via telephone conference call 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.
- i. The cost of the Mediator includes a \$100 administrative fee to open a case file for the mediation, review the Portal, and other administrative tasks. The cost of the Mediator for the mediation session shall be charged at a rate of \$300 per hour. The total \$400 cost of the Mediator shall be 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 mediation session (unless directed otherwise by these guidelines)**. Upon a party's failure to pay the Mediator's fees, the Mediator may cancel the mediation session and shall report the failure to the Court.

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<sup>13</sup> No later than three days after the telephonic conference, counsel for both parties shall document the matters discussed at the conference in the Portal.

<sup>14</sup> The urgency of scheduling the mediation session will vary depending on the circumstances at the time of the appointment and the role necessary for the mediator, including whether the mediator is to assist in the final submission of documents for consideration by the underwriter or approving official, or to assist in the review of the denial of LM/MM or a related issue.

- ii. After the conclusion of the mediation session, if further mediation 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 scheduling of the additional session shall be posted on the Portal by counsel for the Debtor(s).
  - iii. 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 LM/MM is approved prior to the scheduled status hearing, counsel may file a report to that effect and request that the hearing be removed from the Court’s calendar.
- (12) **Unless a shorter time is set by applicable law, rules or regulations (such as the CFPB), the Mortgage Creditor shall have a total of 120 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. The expiration of the 120-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.**
- a. If LM/MM remains under active consideration after the expiration of the 120-day Loss Mitigation Period, the parties may request a 30-day extension of the period by filing a motion with the Court on CM/ECF.
- (13) 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 R](#) for consideration and approval by the Court.<sup>15</sup> 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.
- a. During the trial payment period, the Mortgage Creditor shall timely post in the Portal receipt of each of Debtor(s)’ trial payments.
- (14) 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 S](#).<sup>16</sup> 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.

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<sup>15</sup> The proposed ***Order Approving Trial Period Plan*** should be filed using the CM/ECF event, *Proposed Order Approving Trial Period Plan*.

<sup>16</sup> The proposed ***Consent Order Approving Loss Mitigation/Mortgage Modification*** should be filed using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

- i. 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.
- ii. 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.
- iii. Debtor(s) shall upload on to the Portal an executed copy of any final agreement for LM/MM.

(15) Upon a final denial of LM/MM (after full conclusion any appeals), counsel for the Mortgage Creditor must submit a Mortgage Loan Modification Report, using the form attached as [Exhibit P](#).<sup>17</sup> **Any denial shall include a detailed explanation for the denial, including specific and enumerated reasons. The Portal shall remain open until the conclusion of all appeals and the filing of the Mortgage Loan Modification Report, at which time, either party may close the Portal.**

(16) 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. The Portal shall remain open for communication until such time as the modification is finalized. 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.

**d. Good Faith Requirement.** All parties are required to act in good faith throughout the LM/MM process. The Mediator or all counsel 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.**

i. **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(s) and a representative of the Mortgage Creditor who is most knowledgeable on Debtor(s)' LM/MM request and any other relevant party, along with counsel. Sanctions including an award of attorney's fees may be considered at such hearing.

**e. Requesting LM/MM after Relief from the Automatic Stay.** After the entry of an order granting relief from the automatic stay to the Mortgage Creditor, any new requests for LM/MM review must be filed within 45 days after the entry of the order granting relief absent a demonstration of extraordinary circumstances or the consent of the affected Mortgage Creditor. Untimely requests

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<sup>17</sup> The *Mortgage Loan Modification Report* should be filed using the CM/ECF event of the same name.



for LM/MM may be summarily denied without a hearing. Further, any Notice and Motion for Loss Mitigation/Mortgage Modification filed after relief has been granted to the Mortgage Creditor shall specify in detail the Debtor(s)' change in circumstances to warrant a LM/MM review.

- f. **Repeated LM/MM during Case:** In instances where a prior LM/MM review has been concluded during the case, upon a request for an additional review in the Portal and in the event of a Creditor's objection, the Court's approval of the additional request will depend upon the Debtor(s)' demonstration of a change in circumstances.
- g. **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.

**Option One (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.*

*Upon the failure of Debtor(s) to be approved for LM/MM, Debtor(s) reserve the right to provide for the treatment of the mortgage loan by an amended plan.*

**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) via the Portal process set forth in Chamber's Guidelines of the mortgage loan secured by the following property:*

*[Real Property Description]*

*Debtor(s) will file a Notice and Motion for Loss Mitigation/Mortgage Modification within 21 days after the filing of this initial plan. 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 required Trial Period Plan Payments, after 14 days' written notice of the Creditor's intent to seek relief from the stay to the Debtor(s), Debtor(s)' Counsel, and the Trustee, the Mortgage Creditor may 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.*



### **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 Chamber's Guidelines during the bankruptcy case.*

- h. 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, a no-look fee of up to \$2,000 may 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 O](#). The fee provides additional compensation for all services through the completion of the LM/MM process and includes:
- a. Filing of the **Notice and Motion for Loss Mitigation/Mortgage Modification** and proposed **LM/MM Order**;
  - b. Assembling and submitting Debtor(s)' Prepared Package;
  - 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;
  - e. 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
  - f. 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).
  - g. Active participation in any telephonic conference with the Mortgage Creditor.
  - h. Active participation in mediation.

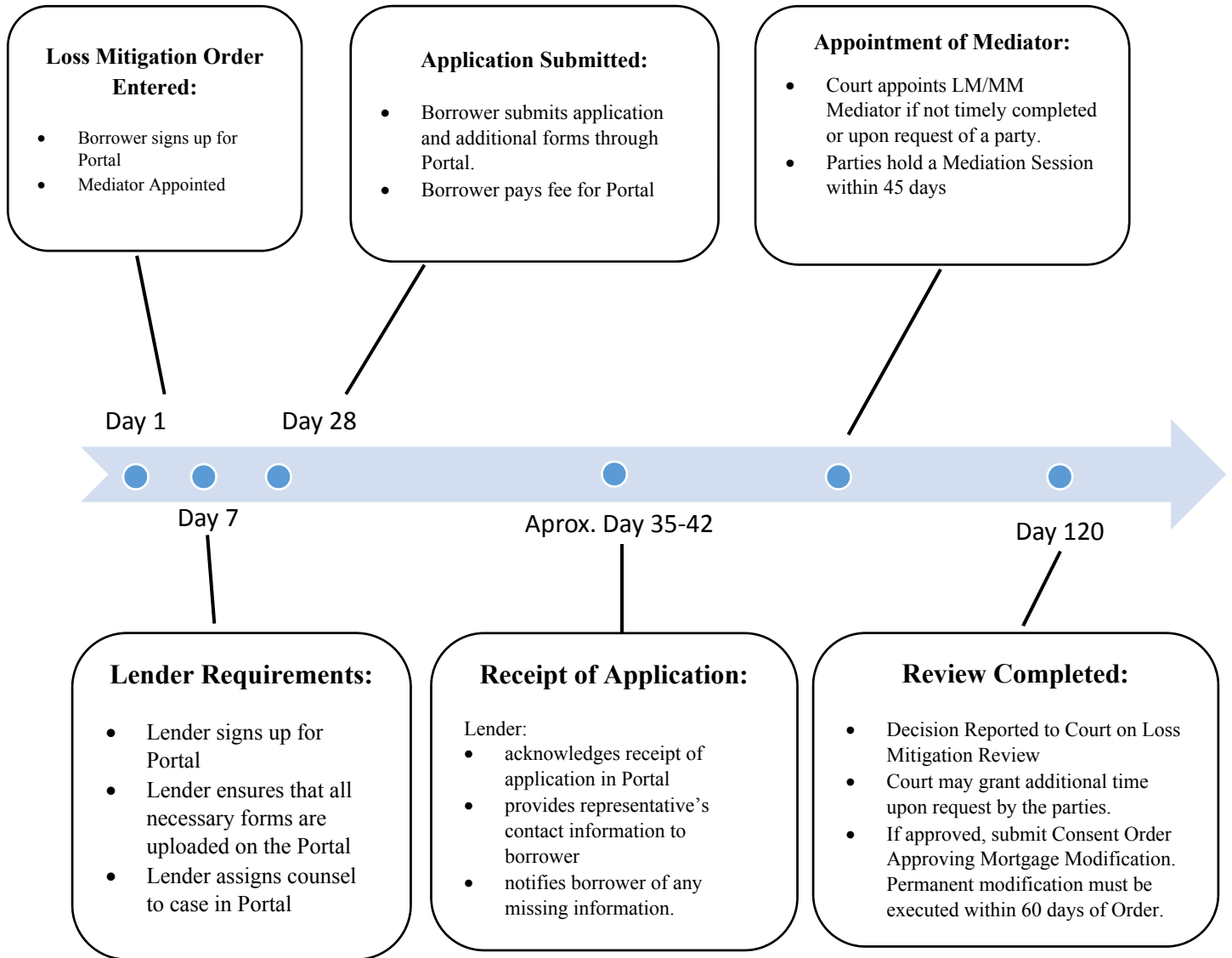
As an alternative to the no-look fee, Debtor(s)' counsel and Debtor(s) may agree upon a different fee amount paid by the Debtor(s) directly to counsel upon the completion of the Application for Supplemental Fees procedures listed in SC LBR 2016-1(b)(2).

An additional fee of \$500 may be allowed for representation of Debtor(s) and the filing of related pleadings in a contested hearing, including testimony, on any motion to enforce LM/MM guidelines.

The additional fees shall be requested at the conclusion of the contested hearing by oral motion and authorized by the Court by separate order.

In addition to these 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).

## Timeline for Loss Mitigation Review:



These deadlines are supplemental to and do not supersede the deadlines required in other legal mandates, including the National Mortgage Settlement and the CFPB.

### **III. Non-Portal LM/MM**

- a. 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.<sup>18</sup> Failure to timely notify the Court of such efforts may result in adverse rulings and/or sanctions.
- b. 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 T](#). 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.
- c. 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 U](#). 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.
- i. 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.
  - ii. 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.
  - iii. 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.
- d. 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 \$400 for efforts to obtain Court approval by filing an application for supplemental fees in accordance with SC LBR 2016-1.
- e. 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.

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<sup>18</sup> Unrepresented Mortgage Creditors may submit correspondence to chambers by e-mail to [jwaites\\_prose@scb.uscourts.gov](mailto:jwaites_prose@scb.uscourts.gov), with copy provided to Debtor(s)' Counsel and the Trustee.