

**CHAMBERS GUIDELINES**  
**Hon. John E. Waites, Judge**  
**United States Bankruptcy Court**

<b>Chambers Contact Information</b>	
<b>Telephone Numbers</b>	843-727-4112 (Charleston) 803-253-3751 (Columbia)
<b>Fax Numbers</b>	843-727-4720 (Charleston) 803-253-3464 (Columbia)
<b>Law Clerks</b>	Tara Nauful ( <a href="mailto:Tara_Nauful@scb.uscourts.gov">Tara_Nauful@scb.uscourts.gov</a> ) (Charleston) Andrew Powell ( <a href="mailto:Andrew_Powell@scb.uscourts.gov">Andrew_Powell@scb.uscourts.gov</a> ) (Columbia)
<b>Courtroom Deputy</b>	Agnes Babb ( <a href="mailto:Agnes_Babb@scb.uscourts.gov">Agnes_Babb@scb.uscourts.gov</a> ) (Charleston/Columbia)
<b>Preferred Communication Method</b>	For hearing related matters, e-mail <a href="mailto:judgetwaites_hearings@scb.uscourts.gov">judgewaites_hearings@scb.uscourts.gov</a> . For all other matters, e-mail law clerks directly.

**Proposed Orders:** File on CM/ECF unless otherwise advised. All proposed orders should include a cover page<sup>1</sup> and must clearly set forth the grounds and contain findings that justify the entry of the order. A proposed order should not merely refer to or approve the application/motion. Orders due after court hearings should be filed within 10 days of the hearing.

**Joint Statements of Dispute:** File on CM/ECF no later than 10:00 a.m. two business days before the hearing.

**Deadline to request continuance or notify Court of settlement or withdrawal in order to remove a matter from the hearing calendar:** 10:00 a.m. two business days before the hearing.

**Self-Scheduled Hearings:** To determine if a matter should be self-scheduled, consult lists provided in SC LBR 9013-4 and the Court Calendar available [here](#).

To determine whether a Chapter 13 matter is to be scheduled on the consent or dispute calendar, consult LIST OF MATTERS FOR SCHEDULING IN CHAPTER 13 CASES (JUDGE WAITES CASES ONLY) set forth in [Exhibit B](#).

---

<sup>1</sup> The cover page expedites the signing of the large volume of orders received by the Judge.

**INDEX**

Continuances, Settlements, & Withdrawals..... [3](#)

Joint Statements of Dispute..... [4](#)

Chapter 13 Procedures..... [5](#)

Stay Relief Procedures..... [11](#)

Loss Mitigation/Mortgage Modification ..... [13](#)

Motions to Substitute Collateral/Use Insurance Proceeds..... [24](#)

Exhibits in Adversaries and Contested Matters..... [25](#)

Adversary Proceedings..... [26](#)

Requests for Emergency Relief..... [28](#)

Telephone/Videoconference Participation in Hearings..... [29](#)

Judicial Lien Avoidance Instructions..... [30](#)

Student Loan Debt Procedures..... [31](#)

## CONTINUANCES, SETTLEMENTS, & WITHDRAWALS

This section applies to all matters on the Judge's docket, with the exception of adversary proceedings, which are governed by separate sections below. **In order to be timely considered by the Judge, requests for continuances, notifications of settlement, or withdrawals must be filed on CM/ECF by no later than 10:00 a.m. two business days prior to the date of the hearing.**<sup>1</sup> **Absent removal of the matter from the court calendar, all counsel and parties shall attend.**

### **I. Continuances**

Continuances may be timely requested using the *Request for Continuance* text event on CM/ECF (if all responding parties consent) or by filing a motion for continuance along with a separate calendar removal request (if unable to obtain consents of all responding parties). Prior to making a continuance request in chapter 13 matters, the chapter 13 trustee should be consulted.<sup>2</sup> Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court not granting the relief requested.

**Continuances are not effective until granted by court order.**<sup>3</sup>

### **II. Settlements**

The settlement of a matter scheduled for hearing should be promptly reported to chambers using the *Notification of Settlement and Request for Removal from Court Hearing Calendar* text event on CM/ECF; or where applicable, by filing a notice and application for settlement pursuant to Fed. R. Bankr. P. 4001(d) or 9019, and a calendar removal request.

### **III. Withdrawals**

Withdrawals of any filing upon which a hearing has been set should be filed on CM/ECF using the *Withdrawal from the Court Calendar* text event. When prompted by the text event, the party filing the withdrawal must specify the reason for withdrawal, including, but not limited to, the debtor's agreement to file an amended plan or the parties' agreement to enter into a consent order or take other action. Parties are required to fill out all fields in the CM/ECF text event, and the failure to do so may result in the Court requiring the parties to withdraw the matter at hearing.

---

<sup>1</sup> Extraordinary circumstances such as illness or family emergency will also be considered to obtain a continuance after the deadline. To make a late request due to extraordinary circumstances, counsel should both file the request on CM/ECF and email the request to Chambers.

<sup>2</sup> For some matters relating to confirmation, the matter will not be removed from the calendar in advance, but the Trustee may announce the continuance on the record during the hearing.

<sup>3</sup> With regard to motions to dismiss or convert pursuant to 11 U.S.C. § 1112, a request for a continuance by the movant or consent to a continuance by the movant shall be deemed a waiver of the scheduling and ruling deadlines imposed by 11 U.S.C. § 1112(b)(3) and the rules.

## JOINT STATEMENTS OF DISPUTE

If a matter set for hearing is contested, the parties should file a Joint Statement of Dispute by the applicable deadline, using the form attached as [Exhibit A](#).<sup>5</sup> If the pleadings on which the hearing is based clearly set forth all issues to be decided by the Court and the statutory, case law or other applicable authority, the parties may simply reference the pleadings in those sections of the Joint Statement of Dispute and complete the other sections.

Parties and counsel submitting a Joint Statement of Dispute **may not reserve** the right to materially alter or supplement the Joint Statement of Dispute and shall be bound to the position and disclosures provided therein. The parties shall be presumed ready for a hearing upon reasonable notice at any time after the submission of the Statement of Dispute. Representations made in a Joint Statement of Dispute shall be considered binding on the parties. A reference to the proposed submission of evidence and the availability of witnesses to be called by a party may be relied upon by the opposing party. Counsel shall be prepared to discuss the Joint Statement and the affected proceeding with the Court at any time after its submission.

If parties cannot agree to a Joint Statement of Dispute, separate Statements shall be submitted to the Court within the same deadline set forth and shall be served upon opposing counsel via e-mail or hand delivery, along with an explanation of reasons the statement could be submitted jointly.

The failure by any party/counsel to timely submit a Joint Statement of Dispute which is complete and submitted in good faith, or to timely and fully consult with the Trustee or opposing party/counsel, or to be reasonably available for discussion with the Court may be deemed by the Court to be a failure of that party to prosecute and may result in the dismissal or denial of the party's position, pleading, or plan of reorganization and may result in other sanctions pursuant to Bankruptcy Rule 9011, 11 U.S.C. § 105, 28 U.S.C. § 1927, or the inherent authority of the Court.

If a matter is settled after the filing of a Joint Statement of Dispute, counsel should advise chambers immediately by e-mail to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov) with copy to all participating counsel.

**Deadlines to submit proposed Joint Statements of Dispute is 10:00 a.m. two (2) business day before the hearing.**

---

<sup>5</sup> **The form used by the Judge differs from the form provided in the Local Rules.**

## CHAPTER 13 PROCEDURES

The following procedures<sup>6</sup> for chapter 13 matters apply to cases assigned to the Judge.<sup>7</sup>

### **I. Local Rule 3015-4 Compliance**

Upon the failure to timely provide to the chapter 13 trustee (the “Trustee”) the information required by Local Rule 3015-4, the Trustee shall report such deficiency to the Court at the confirmation hearing and advise counsel for the debtor(s) by no later than **10:00 a.m. two business days prior to the confirmation hearing** if a dismissal based on that failure will be requested at the hearing.

### **II. Duty to Consult**

In order to comply with Bankruptcy Rule 9014(e), the Trustee, parties, and counsel who have a chapter 13 matter scheduled for hearing before the Court shall have a duty to timely consult with each other regarding the matter and discuss settlement possibilities or stipulations.

### **III. Chapter 13 Calendar**

The calendar for hearing chapter 13 case matters before the Judge is divided into two calendaring types: a consent calendar and a dispute calendar.<sup>8</sup> The type of case matter to be scheduled for each calendar is identified on [Exhibit B](#) and shall be scheduled accordingly by the Court and parties. Matters which are incorrectly scheduled may be stricken, determined, rescheduled or continued without notice as necessary by the Court or in the interests of justice.

#### **A. Consent Calendar**

- 1. Definition of Consent Matter.** Matters for the chapter 13 consent calendar are matters that are frequently uncontested or otherwise resolved.
- 2. General Procedures & Role of the Trustee.** Chapter 13 consent calendars may be conducted in court by the Trustee. Prior to the chapter 13 consent calendar, in a matter regarding confirmation, the Trustee shall provide notice of deficiencies in a debtor’s plan of reorganization (the “Plan”).<sup>9</sup> In conducting the chapter 13 consent calendar, the Trustee shall address each scheduled matter and report the Trustee’s recommendations to the Court. In doing so, the Trustee may discuss Plan deficiencies and objections by parties in interest, examine debtors or other witnesses, identify other information needed for case administration, and report settled and disputed matters. Counsel or parties may also make statements on the record. The

---

<sup>6</sup> These procedures **do not** govern the hearing of motions for relief from the automatic stay.

<sup>7</sup> The goal of these procedures is to reduce unnecessary attendance and wait time at hearings for the bar and parties, allow compliance with Fed. R. Bankr. P. 9014(e), provide parties with further opportunity to settle matters or prepare arguments, and assist the Judge in preparing for significant issues not highlighted by the pleadings through research and review.

<sup>8</sup> Consent and dispute calendars may be held on the same date, but may be scheduled at different times.

<sup>9</sup> Trustees typically provide written notice of deficiencies in a debtor’s plan of reorganization at a debtor’s 11 U.S.C. § 341 meeting of creditors and, if developments require, several days in advance of the hearing on confirmation of a debtor’s plan of reorganization.

Court or Trustee may announce further hearing dates and times for continued matters or matters deemed in dispute. If a new hearing date is announced without objection, all counsel and parties will be presumed to agree to the date and time and no later conflicts will be accepted. Settlements, Trustee recommendations, and other agreed upon dispositions shall be recorded and considered by the Judge.

- 3. Attendance.** In most instances, unless otherwise advised, the Judge does not require the attendance of debtor(s) or witnesses at a hearing on the Chapter 13 consent calendar. However, **the Judge requires attendance by debtor(s) and counsel** in the following circumstances:
- a. If debtor(s) file an amended plan, amended schedules or statements, or a claims objection within 3 business days prior to a confirmation hearing, which materially affects the confirmation hearing, unless the filing or amended document resolves all objections and the Trustee has affirmatively excused the attendance.
  - b. There is an outstanding objection and the Trustee has not agreed to carry the matter over or excused attendance in accordance with the Joint Statement of Dispute procedures (set forth in [Exhibit A](#)). Counsel for the objecting parties and necessary witnesses would also be expected to attend.
  - c. A case in which the Trustee has provided notice that a request to dismiss the case will be made at the confirmation hearing pursuant to Local Rule 1017-2(a).

In all other circumstances, debtor(s)' attendance may be required by the Trustee in order for the Trustee to obtain relevant information and make recommendations to the Court. Accordingly, **it is the responsibility of debtor(s), objecting parties, and counsel to inquire with the Trustee as to the need for attendance.**<sup>10</sup> If counsel has informed the Trustee of a resolution of a matter and the Trustee has agreed, the Trustee may report a resolution on the record and excuse counsel's attendance. The failure to attend by counsel or parties when not otherwise excused shall be reported to the Court by the Trustee and may be deemed a failure to prosecute.

**4. Calendar Removal.**

**Continuances for Matters Identified as Being Contested – Joint Statement of Dispute Procedure.** If any matter scheduled on the consent calendar is identified as being contested or requires the presentation of testimony or other evidence or oral argument to the Judge, a Joint Statement of Dispute shall be filed in accordance with the Joint Statement of Dispute procedures set forth in [Exhibit A](#). The same duty to consult applies with respect to disputed matters involving the Trustee. In the event that the Trustee is a litigant to a disputed matter, unless excused, the Trustee shall also bear a duty to submit a Joint Statement of Dispute, except as to issues raised by the Chapter 13 Trustee in writing regarding compliance with 11 U.S.C. §§ 1322 and 1325.

If counsel and the Trustee have agreed to a continuance prior to the filing of a Joint Statement of Dispute or all counsel have requested a later hearing date in the Joint Statement

---

<sup>10</sup> To assist the bar, Trustees may develop, implement, and publish standard rules and procedures governing attendance by debtors at hearings scheduled on the consent calendar.

of Dispute, the Trustee in his or her discretion may excuse attendance of counsel and the parties and may announce at the originally scheduled hearing a continuance of up to 30 days. If no Joint Statement of Dispute has been filed, the Trustee may extend the time for filing of a Joint Statement of Dispute to a time no later than 10:00 a.m. two (2) days before the continued hearing. If a continuance of more than 30 days is needed, a continuance request must be made in accordance with the procedures set forth in the [Continuances, Settlements & Withdrawals](#) section.

Upon either the failure of the parties to file a Joint Statement of Dispute or if the Trustee does not consent to a continuance, all counsel for the parties to the dispute shall appear at the hearing on the consent calendar. Counsel should be prepared on the issues and the law. A hearing will be held by the Judge and treated as a preliminary hearing unless otherwise indicated in advance by the Court.

## **B. DISPUTE CALENDAR**

- 1. Definition of Disputed Matter.** Disputed matters are matters which by their nature are likely to require the presentation of testimony or other evidence or argument before the Judge. A list of matters that are to be originally scheduled for a hearing on the dispute calendar is provided in [Exhibit B](#).
- 2. General Procedures in Disputed Matters.** Parties and counsel should be fully prepared to proceed with a dispositive hearing on matters originally scheduled on the dispute calendar unless the matter is removed by the Court upon a continuance, report of settlement, or withdrawal as stated below or unless counsel are otherwise advised by the Court. Prior to the hearing on the Disputed Matter, parties and counsel shall have the duty to:
  - a. to consult and define the issues to be decided by the Court;
  - b. disclose the witnesses to be called at the hearing;
  - c. exchange any evidence to be presented to the Court five business days before the hearing;
  - d. enter into stipulations that may assist the Court at the hearing; and
  - e. estimate the time needed for hearing.<sup>11</sup>
- 3. Attendance.** Counsel, necessary witnesses, and parties are expected to appear for a matter originally scheduled on the dispute calendar, unless the matter is removed from the calendar pursuant to the procedures set forth below.
- 4. Calendar Removal.** For guidelines regarding reporting settlements, filing withdrawals, or requesting continuances of disputed matters for purposes of calendar removal, see the [Continuances, Settlements, & Withdrawals](#) section.

---

<sup>11</sup> **For matters expected to take more than 1 hour, counsel should promptly advise chambers by e-mail to eliminate unnecessary wait time.**

- 5. Filing of a Joint Statement of Dispute.** If the parties expect to present testimony or evidence (the admission of which has not been stipulated), or present oral arguments or if all parties' pleadings do not clearly set forth all of the grounds for the dispute, a Joint Statement of Dispute shall be filed in accordance with the procedures set forth in [Exhibit A](#).

#### **IV. Requirement for Confirmation**

As a condition to confirmation of a chapter 13 plan, the debtor(s) shall represent by filing a Debtor's Statement in Support of Confirmation via the Plan (by the addition of nonconforming language) or via CM/ECF, which indicates that they understand the following:

- (1) The obligations set forth in the plan, including the amount, method, and timing of payments made to the Trustee or directly to creditors;
- (2) The consequences of any default under the Plan; and
- (3) That debtor(s) may not agree to sell or sell property, employ professionals, incur debt (including modification of debt), or request or agree to mortgage modification or other loss mitigation during the pendency of the case without the advance authorization of the Bankruptcy Court.

The Trustee shall not recommend confirmation without ensuring that such Statement has been either included in the Plan or filed on CM/ECF.

#### **V. Expedited Fee Amount (No-Look Fee)**

The expedited fee ("no-look fee") amount for purposes of SC LBR 2016-1(b)(1) is \$3,700 for a consumer case and \$4,200 for a business case. To the extent that funds are available after deduction of the Trustee's commission and the Chapter 13 plan provides for such treatment, the Chapter 13 Trustee shall disburse up to \$1,500 of the expedited fee to debtor's counsel in the Trustee's Initial Disbursement under the Chapter 13 plan.

An additional no-look fee of \$500 may be allowed for representation in a contested confirmation hearing in which a joint statement of dispute is filed and contested testimony and/or evidence is offered at the hearing.<sup>12</sup> A fee order will be issued at the conclusion of the hearing upon the oral request of counsel.

In extraordinary circumstances where counsel anticipates significant work necessary for the case and a written fee agreement has been entered with the debtor, counsel may present a **Certification and Presumptive Fee Request** which seeks a higher presumptive fee. **The Certification must be presented within fourteen days of the filing of the petition and contain a summary of facts demonstrating cause for a higher fee.** Prior to or with the filing, the Certification shall be presented to the Chapter 13 Trustee for the Trustee's consideration of consent. The Certification and Presumptive Fee Request may be used to obtain approval of attorney's fees without the filing of a formal fee application and hearing. An order allowing a higher presumptive fee may be entered on an *ex parte* basis. Counsel should utilize the CM/ECF

---

<sup>12</sup> An applicant may qualify for the additional fee if a matter is settled on the eve of a hearing after incurring substantial preparation and efforts.



event “Certification and Presumptive Fee Request” when filing the Certification. A copy of the standard certification is available in [Exhibit C](#).

**CAP:** In all instances, attorney’s fees for services provided to a debtor in a chapter 13 case through and up to confirmation of the plan shall be capped at \$5,400, unless otherwise authorized by court order.

## **VI. Supplemental Fee Amount**

The supplemental fee amount for purposes of SC LBR 2016-1(b)(2)(A) is \$2,000 subject to a limitation that no more than \$1,200 in supplemental fees may be requested within any one year period after confirmation unless otherwise ordered by the Court.

## **VII. Payments to the Trustee under the Chapter 13 Plan**

- A. Pre-Confirmation Payments.** Prior to confirmation, a debtor shall make their payments to the Trustee directly and timely (11 U.S.C. § 1326(a)). Unless good cause is shown to the Court by the debtor, the Trustee shall not recommend confirmation of chapter 13 plan unless the debtor is current on their pre-confirmation payments.
- B. Post-Confirmation Payments.** Unless otherwise exempted, **no later than 14 days after the date of filing a petition** under chapter 13 or the date of conversion to chapter 13 (if applicable), debtor shall submit to the Trustee the form included as [Exhibit D](#), which indicates the debtor’s agreement to make the post-confirmation payments to the Trustee through a wage order pursuant to 11 U.S.C. § 1325(c). In cases assigned to Charleston Division, Debtor may alternatively agree to establish and use a Trustee-approved electronic account deduction program,<sup>13</sup> commencing with the payment due in the month that debtor(s)’ plan is confirmed.

Debtor may be exempted from this requirement if:

- (1) The debtor is not currently employed;
- (2) The debtor does not receive payments that are amendable to a wage order;
- (3) The debtor’s employer has less than 20 employees;
- (4) The debtor is self-employed; or
- (5) Other good cause is shown in writing submitted to the Trustee by the 14 day deadline.

Every instance of exemption shall be presented by the Trustee to the Court for review as a condition of confirmation.

**Upon the failure to timely comply with the requirements of Section VII, the debtor and debtor’s counsel shall appear before the Court at the first available dispute confirmation hearing date to show cause for the failure to comply.**

---

<sup>13</sup> TFS Bill Pay (<http://www.tfsbillpay.com>), a third party payment method specializing in payments to trustees under chapter 13 plans.

## VIII. Valuation Dispute Mediation Program

In an effort to facilitate communication and settlement of contested valuation issues in Chapter 13 cases and in order to reduce costs of contested hearings, mediation may be ordered in cases involving valuation of secured claims on real estate and large value personal property, such as manufactured homes, tractor trailers or RVs (but excluding automobiles). By court order, a mediator is selected and appointed to perform up to 2 hours of service in preparing for and conducting the mediation sessions. The mediator is compensated by a fee of \$500, to be equally divided between the debtor(s) and creditor.

- A. **Duty of Counsel.** Upon the filing of an objection involving the valuation of a secured claim on real estate or large value personal property, the objecting party and the debtor shall immediately notify Chambers of the valuation dispute by an email to [judgewaites\\_porders@scb.uscourts.gov](mailto:judgewaites_porders@scb.uscourts.gov) with a copy to the Chapter 13 Trustee and opposing counsel.
- B. **Exemption.** Parties may request an exemption from mediation under the Valuation Dispute Mediation Program upon the filing a separate correspondence requesting the exemption and detailing the cause for the exemption.

## IX. Disclosure of Certain Contested Matters

In addition to counsel's duty to disclose to Chambers an objection involving the valuation of a secured claim on real estate or large value personal property, counsel is also under the duty to notify Chambers and the Chapter 13 Trustee immediately upon the filing of an objection/response in a contested matter involving issues related to:

- Domestic Support Obligations,
- Student Loan Debt.

## STAY RELIEF PROCEDURES

### **I. Standard Form Orders Regarding Motions for Relief from the Automatic Stay in Chapter 13 Cases**

Due to the large volume of settlement orders and other § 362 orders reviewed in chambers, standard form orders have been developed to increase efficiency in the review and processing of these orders. The use of the following form orders relating to motions for relief from the automatic stay will allow for expedited consideration without a hearing:

#### **A. Settlement Orders for Motions for Relief.<sup>14</sup>**

1. Ongoing payments and cure payments made directly to creditor (no equity): See [Exhibit I](#).
2. Ongoing payments and cure payments made directly to creditor (equity): See [Exhibit J](#).
3. CONDUIT: Ongoing payments and cure payments made to Chapter 13 Trustee: See [Exhibit K](#).
4. CONDUIT: Ongoing payments made to Chapter 13 Trustee and cure payments made directly to creditor (no equity): See [Exhibit L](#).
5. CONDUIT: Ongoing payments made to Chapter 13 Trustee and cure payments made directly to creditor (equity): See [Exhibit M](#).
6. Parties pursuing LM/MM review: See [Exhibit N](#).
7. Insurance Coverage: See [Exhibit O](#).

#### **B. Orders Granting Relief.**

1. Order granting relief from stay in Chapter 13 case based upon a failure to object to motion for relief from stay. See [Exhibit F](#). This order may also be generated using the CM/ECF text only event “Certification of No Response and Request for Default 362 Order.”
2. Order granting relief from stay in Chapter 13 case based upon failure to comply with settlement order. See [Exhibit G](#). For circumstances in which the failure to comply is based on the failure to make payments under the settlement to the creditor, this order may be generated using the CM/ECF event “Affidavit of Default and Request for Order Granting Relief.”
3. Consent order granting relief from the automatic stay to continue or pursue an action in family court. See [Exhibit H](#).

---

<sup>14</sup> With exception of the settlement order for “Parties pursuing LM/MM review” (Exhibit N), these orders may also be generated using the CM/ECF text only event “Request for Settlement Order on Motion for Relief from Stay (Judge Waites).”

**C. Standard Cure Periods.**

For expedited consideration without a hearing, parties should schedule the cure payments in a settlement order for a Motion for Relief under the following uniform standards:

<b>Number of Missed Post-Petition Payments</b>	<b>Length of Cure Period</b>
0-6 Months	12 month cure
7-12 Months	24 month cure
More than 12 Months	To be determined at a hearing before the Court

**II. Settlement Orders Containing Non-Standard Language (Hearing Required).**

Parties may include non-standard language in form Settlement Orders in the section provided or they may draft a settlement order containing non-standard language. **Unless otherwise advised, a hearing, attended by counsel for all parties to the settlement, will be required for approval of any non-standard form order or a settlement order containing non-standard language.**

**III. Ex parte Relief Due to Default on Settlement Order.**

For settlement orders that include an *ex parte* relief provision based on the failure to make payments directly to the creditor, an affidavit of default should state that the default occurred within the effective time period for the *ex parte* relief provision included in the settlement order (e.g., within 12 months after the expiration of the cure period) and indicate with specificity the payments which have not been received since the entry of the settlement order. The affidavit must also include an attachment which demonstrates all direct payments made after the entry of the settlement order and their application.

**IV. Motions to Extend the Automatic Stay**

For all motions to extend the automatic stay filed in cases before the Judge, an affidavit of the movant shall be filed supporting such motion, which provides the information necessary to determine whether the requirements of 11 U.S.C. § 362(c)(3) are met. The affidavit must be filed at the same time as the motion to extend the automatic stay. The chapter 13 plan and all schedules must be filed by no later than five (5) business days prior to the scheduled hearing on the motion to extend the automatic stay. The failure to file the chapter 13 plan and all schedules and statements in time for the Trustee’s consideration may result in the denial of the motion. The motion may be granted in advance of the hearing if the affidavit is timely submitted, there are no objections by parties in interest, and the Trustee consents to the extension.

**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>15</sup> using the following procedures.<sup>16</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>17</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.** 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.

**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>18</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, exchanging documents, and establishing deadlines for completion of the review.

---

<sup>15</sup> **References herein to the Court shall mean Judge Waites only.**

<sup>16</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>17</sup> **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 Y](#), using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

<sup>18</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.

**b. LM/MM Mediation.** In Portal cases, upon the entry of an Order Requiring Loss Mitigation/Mortgage Modification (“LM/MM Order”), the Court appoints a mediator to oversee the LM/MM process and facilitate discussions between the parties.<sup>19</sup>

**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>20</sup> Debtors who seek to represent themselves *pro se* for purposes of pursuing LM/MM assume all risks.<sup>21</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, 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.<sup>22</sup>
- (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)).<sup>23</sup> Failure to include such language may preclude subsequent court approval of any LM/MM agreement.

---

<sup>19</sup> 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.

<sup>20</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 T](#). 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>21</sup> For an additional fee, DMM may offer assistance for debtors who are otherwise unrepresented in using the Portal.

<sup>22</sup> 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.*

<sup>23</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.

- (4) To commence the LM/MM Portal process, Debtor(s)' Counsel shall file a ***Notice and Motion for Loss Mitigation/Mortgage Modification***,<sup>24</sup> using the forms attached as [Exhibits P, Q and R](#), and serve on the applicable Mortgage Creditor, co-borrowers or obligors on the loan, and their counsel, if known.<sup>25</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 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*** and ***Order Appointing LM/MM Mediator***.
- (5) 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.
- (6) Unless the parties are otherwise exempted by a court order, an Order Appointing LM/MM Mediator ([Exhibit R](#)) 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

---

<sup>24</sup> The ***Notice and Motion for Loss Mitigation/Mortgage Modification***, proposed ***LM/MM Order***, and proposed ***Order Appointing LM/MM Mediator*** 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 Q](#) with the following modifications:<sup>24</sup>

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 should include a proposed Order Appointing LM/MM Mediator ([Exhibit R](#)).

**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.**

<sup>25</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.

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.

- (7) 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.
- 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 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.
- (8) 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](http://www.documods.com),<sup>26</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>27</sup> Upon uploading the Debtor(s)' Prepared Package to the Portal, Debtor(s)' Counsel shall assign the Mediator to the account in the Portal.
- (9) Within 7 days after submission of the Debtor(s)' Prepared Package and any other necessary documentation on the Portal, the Mortgage Creditor shall:
- i. Acknowledge receipt of the information on the Portal;
  - ii. Provide on the Portal all contact information of the representative in charge of the Debtor(s)' account; and
  - iii. Notify Debtor(s)' Counsel of any additional or updated information required to process the application.

---

<sup>26</sup> 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).

<sup>27</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.**



- (10) 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.
- i. 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.
- (11) 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.
- i. 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.
- ii. 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.
- (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 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.** 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. 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 S](#).<sup>28</sup> **Any denial shall state specific reasons for the denial.**
- i. 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.
- (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 U](#) for consideration and approval by the Court.<sup>29</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.
- (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 V](#).<sup>30</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.
- 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.
- (15) The parties must submit a Mortgage Modification Report, using the form attached as [Exhibit S](#), at the conclusion of the LM/MM review.
- (16) 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.
- i. 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.

---

<sup>28</sup> The *Mortgage Loan Modification Report* should be filed using the CM/ECF event of the same name.

<sup>29</sup> The proposed *Order Approving Trial Period Plan* should be filed using the CM/ECF event, *Proposed Order Approving Trial Period Plan*.

<sup>30</sup> The proposed *Consent Order Approving Loss Mitigation/Mortgage Modification* should be filed using the CM/ECF event, *Proposed Consent Order Approving LM/MM*.

- ii. **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.
- (17) 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.
- d. **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.**
- 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 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.

e. **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.*

(2) 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.*

(3) 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.*

- f. 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 **\$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 Q](#). 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 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).

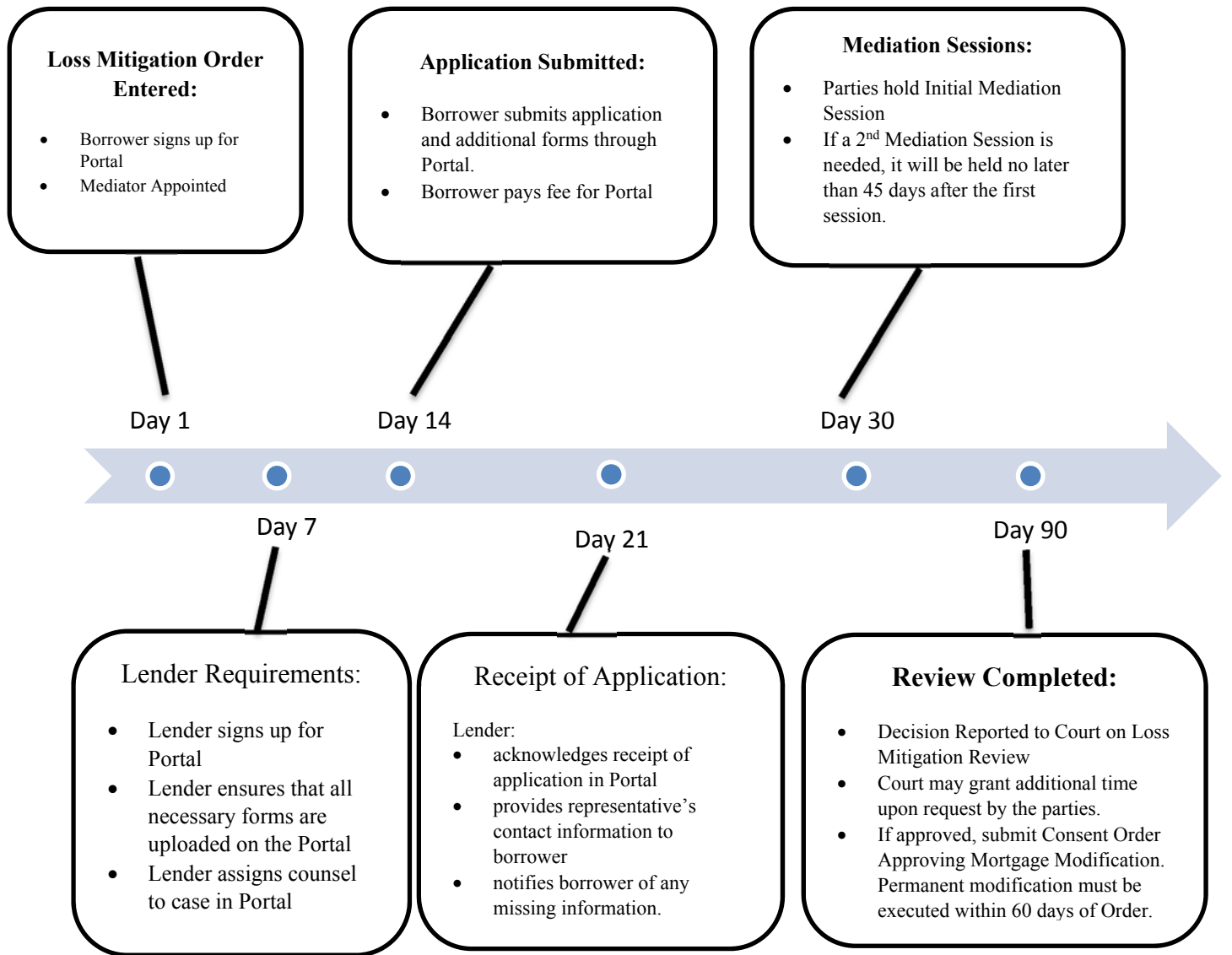
An additional fee for LM/MM may be allowed for representation of Debtor(s) and the filing of related pleadings for the following matters:

1. **\$500** – Upon the conclusion of a contested hearing, including testimony, on Debtor(s)' motion to enforce LM/MM guidelines.
2. **\$300** – Upon completion of a Second Mediation Session.

The additional 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 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>31</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 W](#). 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 X](#). 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.
  - iv. 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.<sup>32</sup> Unless otherwise ordered, the automatic stay shall remain effective as to all other lienholders.
- 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 \$300 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.

---

<sup>31</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.

<sup>32</sup> 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*.

**MOTIONS TO SUBSTITUTE COLLATERAL/USE INSURANCE PROCEEDS**

Motions to substitute collateral or use insurance proceeds to purchase a vehicle of equal or greater value may be filed on passive notice and scheduled for a possible hearing on the consent calendar. Proposed orders granting motions to substitute collateral should be filed using the form attached as [Exhibit E](#).



## EXHIBITS IN ADVERSARIES & CONTESTED MATTERS

The original and two (2) bench copies of all paper exhibits and an itemized list of the exhibits are to be submitted to the courtroom deputy prior to the hearing or at the hearing and are not to be filed on CM/ECF.<sup>1</sup> In addition, counsel shall ensure that there are enough copies of the exhibits for all opposing counsel, *pro se* parties, and any witness providing testimony regarding the exhibits. To avoid confusion, the exhibits of the party initiating the matter should be premarked using letters (e.g., Movant's or Plaintiff's Exhibit A, B, C, etc.), and the responding party's exhibits should be premarked using numbers (e.g., Respondent's or Defendant's Exhibit 1, 2, 3, etc.) The parties shall exchange exhibits and confer **prior** to the hearing to determine whether they will be able to stipulate to the admission of exhibits set forth in the Joint Statement of Dispute or Joint Pretrial Order. Court will not start until all exhibits are correctly submitted to the Courtroom Deputy. If a matter is scheduled to be heard by video or telephone conference, the premarked exhibits shall be provided to the courtroom deputy two (2) business days prior to the scheduled hearing by email to [judgewaites\\_hearings@scb.uscourts.gov](mailto:judgewaites_hearings@scb.uscourts.gov), or by delivery to the applicable Court location via U.S. Mail, FedEx/UPS, or hand delivery.

**Electronic Evidence:** Counsel shall contact the courtroom deputy no later than three business days prior to the hearing/trial to make arrangements for the electronic evidence and to ensure compatibility of your electronic devices with the Court's equipment. If electronic presentation of evidence is to be used, three paper copies need to be submitted. Unless otherwise addressed in the scheduling or pretrial order, parties shall provide opposing counsel with a copy of the electronic evidence to be presented at hearing/trial (if a copy is not possible, counsel should provide a specific description of the evidence) no later than five business days prior to the date of the hearing/trial.

---

<sup>1</sup> Exhibits in Adversaries are to be submitted with the Joint Pretrial Order in accordance with the terms of the Judge's Scheduling Order. In contested matters, exhibits should be submitted to the courtroom deputy prior to the Judge taking the bench with sufficient time provided to ensure proper identification and handling.

## ADVERSARY PROCEEDINGS

### I. Scheduling Orders

Once the issues are joined or upon order of the Court, counsel are notified by chambers to meet the requirements of Fed. R. Civ. P. 26(f) within 14 days and are requested to e-mail a Discovery Report to the law clerks to advise the Court of the time necessary for discovery. Scheduling orders are thereafter entered pursuant to Fed. R. Civ. P. 16(b). In its discretion or if requested by the parties, the Court may conduct an initial pretrial or status conference.

### II. Modification of Scheduling Orders

If the parties wish to alter a deadline in a scheduling order and it does not require the rescheduling of a hearing before the Court, the request should be made to chambers and should indicate the proposed change and whether all parties agree to the modification. If the proposed amendment would necessitate rescheduling a matter already noticed for hearing, including the final pretrial hearing, or trial, the parties must file a motion seeking an amended scheduling order and indicate the reasons for amendment, whether all parties consent, and the status of discovery efforts. **An agreement to modify a deadline or a request to so modify is not effective absent entry of an amended scheduling order by the Court. Any modified scheduling order prepared by counsel should follow exactly the language of the original scheduling order without change, deletion or addition other than the proposed extended deadline unless otherwise approved by the Court in an actual hearing.**

### III. Consent to Entry of Final Orders and Judgments

Any party objecting to the entry of final orders or judgments by this Court on any issue in the adversary proceeding, whether or not designated as “core” under 28 U.S.C. § 157(b), shall file a motion by the deadline specified in the scheduling order requesting that this Court determine whether the proceeding is subject to the entry of final orders or judgments by this Court. **FAILURE OF ANY PARTY TO FILE A MOTION ON OR BEFORE THE DEADLINE PROVIDED IN THE SCHEDULING ORDER SHALL CONSTITUTE FINAL AND BINDING CONSENT BY SUCH PARTY TO THIS COURT ENTERING FINAL ORDERS AND JUDGMENTS IN THE PROCEEDING.**

### IV. Availability of Court During Depositions

Absent advance notification, the Judge is usually not available to address discovery issues arising during a deposition. If parties anticipate the need for the Court’s involvement, the issues should be raised in advance by motion or joint request.

### V. Continuances

Continuances for hearings scheduled in adversary proceedings, including trial, may be requested **only** by the filing of a motion for continuance along with a calendar removal request. The motion should clearly indicate the reason for the continuance, whether the other parties consent to the

continuance, and the time needed before the next hearing. **Hearings and trials in adversary proceedings may not be continued merely through the submission of a consent order of continuance or through use of the CM/ECF “Request for Continuance” event.**

## **VI. Settlements**

Settlements of adversary proceedings may be reported by filing a consent order, by filing a notice and application for settlement, if required under the Bankruptcy Rules, or through use of the “Notice of Settlement and Request for Removal from Court Hearing Calendar” text event on CM/ECF. **The consent order must clearly indicate whether it resolves all issues in the adversary proceeding in order for the matter to be removed from the calendar.** Counsel are also encouraged to promptly report settlements of adversary proceedings to chambers by e-mail to [judgewaite\\_hearings@scb.uscourts.gov](mailto:judgewaite_hearings@scb.uscourts.gov). To ensure removal from the calendar or to excuse counsel and parties from attendance, settlements must be reported **no later than two business days before the hearing or trial.**

The terms of any settlement resulting in the filing of a Stipulation of Dismissal must be provided to chambers for *in camera* review if any consideration is exchanged in return for the dismissal. In Chapter 13 cases, notice of any such settlement must be provided to the Chapter 13 Trustee so that the Trustee can advise chambers whether he/she consents to the settlement.

## **VII. Joint Pretrial Orders**

Pretrial orders, the requirements of which are detailed in prior scheduling orders issued in the proceeding, are to be submitted timely on CM/ECF. The parties need not agree on every matter contained therein in order to submit the order as joint. If there is disagreement on a matter, the joint pretrial order may reflect the disagreement. The original and one copy of all paper exhibits as well as an itemized list of exhibits shall be submitted to the courtroom deputy at the same time as the Joint Pretrial Order.

**REQUESTS FOR EMERGENCY RELIEF**  
**(Supplement to Local Rule 9075-1)**

**Motions for Expedited Hearings or for Shortened Notice.** Motions for expedited or emergency hearings or to shorten notice are to be filed in accordance with SC LBR 9075-1. Upon the failure to indicate how quickly the matter needs to be heard, the Court will set the matter for a hearing within approximately 20 days from the date of the filing of the motion. **Hearings set on less than 10 days notice will require service of motion/pleading and notice of hearing on all parties entitled to notice by expedited means (facsimile, e-mail, overnight mail or hand delivery).**

## TELEPHONE/VIDEO CONFERENCE PARTICIPATION IN HEARINGS

**Requests to Participate by Telephone or Videoconference.** The Court will consider written requests by counsel to participate by telephone or videoconference capabilities in hearings or trials in which counsel can demonstrate that travel or attendance creates an unnecessary expense or burden and that opposing counsel is informed of the request and does not object to the appearance by telephone. All such requests must be made in writing to chambers and the courtroom deputies (Agnes Babb and Regina Schmidt) as soon as possible and **no later than three business days before the date of the hearing or trial**. Counsel should indicate in their written request the extent of their participation (e.g., mere listening, argument, questioning of witnesses or presenting evidence). The presentation or viewing of evidence by non-attending counsel will require prior coordination with the courtroom deputy. Counsel should not rely on requests for such participation unless and until approved by the Court. Participation by these means may be limited based on the technological capabilities of the Court location.

## JUDICIAL LIEN AVOIDANCE

### **Instructions to Complement Local Rules**

Motions to avoid judicial liens should be filed in accordance with the Bankruptcy Code and Rules as well as SC LBR 4003-2 and accompanying exhibits. In chapter 13 cases, motions to avoid judicial liens should be included in the chapter 13 plan.

Pursuant to 11 U.S.C. § 522(f)(2)(B), all liens must be examined in the context of all other unavoids and unavoidable liens. All liens should be addressed within one motion, or motions submitted concurrently, clearly indicating the priority of the lien to be avoided and that senior unavoids liens are included in the calculation.

Motions are to be avoided from junior to senior. Begin with the most junior lien and determine whether it is avoidable in its entirety. All senior judicial liens would be included in the calculation. If the senior lien is avoidable, then it is appropriate to proceed to the next junior lien to determine its avoidability. The junior lien just avoided would not be included in the calculation, but all senior judicial liens would be included. If it is not avoidable or only avoidable in part, then all senior liens would be unavoidable and there is no need to do any further calculation.

In reviewing motions to avoid judicial liens, the following factors are examined:

- Whether a judgment constitutes a lien (the debtor owns real property upon which the judgment has attached or whether a judgment has attached to the debtor's personal property).
- Whether the debtor is entitled to claim an exemption on Schedule C for the applicable property and whether the applicable property is listed on Schedule A. (If no exemption is claimed on Schedule C, a hearing is required in order for the debtor to present evidence demonstrating his or her entitlement to the exemption.)
- Whether the numerical amounts provided on the motion are consistent with the Schedules and Statement of Financial Affairs.
- Whether the judgment is listed in Debtor's Schedules and Statement of Financial Affairs.
- Whether the total amount of all other liens on property includes all mortgages and/or senior judicial liens, where applicable (see Exhibits A and C to [SC LBR 4003-2](#)).

If it is necessary to file a motion to avoid a judicial lien in a closed case, a motion to reopen the case may not be necessary. Likewise, if it is necessary to amend a schedule in direct relation to a lien avoidance issue, a motion to reopen may not be necessary. Nothing herein should be construed to waive any notice requirements with respect to the motion to avoid judicial lien or amendment of schedules.

## STUDENT LOAN DEBT

These guidelines establish a procedure for compensation for counsel who provide services to debtors in addressing student loan debt in Chapter 13 cases before the undersigned.

A fee in the amounts set forth below (in addition to the no-look fees established in these Guidelines) shall be allowed for any of the following services upon request and permitted by court order:

- 1) **\$1,500** - Contested confirmation hearings on a plan provision addressing student loan debt, including provisions to separately classify student loan debt under § 1322(b)(1), to provide for the curing or waiving of a default under § 1322(b)(3), to provide for the curing of a default and maintenance of payments under § 1322(b)(5), or to address student loan interest under § 1322(b)(10).
- 2) **\$1,000** - In cases in which the student loan debt exceeds \$15,000, plan confirmation providing for debtor(s)' enrollment in/maintenance of an Income Driven Repayment Plan (IDR) (which includes ICR, IBR, PAYE, or REPAYE, etc. versions) with the U.S. Department of Education and/or any student loan servicer/guarantor and which prohibit debtor(s)' disqualification due to bankruptcy. (An additional fee of **\$200** per year is allowable for necessary reenrollments during the term of the case.)
- 3) **\$1000** – Participation in court ordered mediation regarding student loan debt **in lieu of a contested hearing.**

The above stated fees may be approved by the Court upon oral motion at the confirmation hearing (or other contested hearing) or requested by the debtor(s) in the notification of settlement or proposed settlement order addressing student loan debt and approved by court text order.

To qualify for these fees: (1) for a contested hearing, the parties must file a (joint) statement of dispute, present testimony and other evidence, and/or, for issues of law only, file a separate memorandum of law, or (2) for a settlement before trial of a contested hearing, the settlement must occur after substantial preparation and readiness for trial. In the event of mediation, the fees may be authorized upon the mediator's submission of a mediation report indicating that Debtor(s)' attorney actively participated in the mediation.

As an alternative to these fees, an application seeking additional compensation may also be submitted for expedited consideration.