

HOME MORTGAGE MODIFICATION

Individuals in bankruptcy cases assigned to Judge Waites, including joint debtors, may seek court approval of consensual modifications of home mortgage loans in one or more of the following ways:

1. **Loss Mitigation/Mediation Program.**¹³ The Program provides a court supervised means of communication to assist consideration of loss mitigation/mortgage modification in bankruptcy cases. The procedures for participation in the Loss Mitigation/Mediation Program are as follows:
 - a. Prior to the filing of the Notice and Motion for Loss Mitigation/Mediation, Debtor's Counsel shall:
 1. Determine that a mortgage modification is feasible, with the Debtor required to devote 31% of their gross monthly income (or a different amount offered in modification packages by the applicable Home Mortgage Creditor) to repayment of the mortgage, which would include principal + interest + taxes + insurance + assessments;¹⁴ and
 2. Use the Court's approved online loss mitigation document preparation program (the "Document Preparation Program") to prepare the standard loan modification forms (the "Debtor's Prepared Package") to expedite the exchange of information between the Debtor and the Home Mortgage Creditor and ensure greater accuracy in the preparation of the required documentation.¹⁵ The Debtor's Prepared Package is completed through www.documods.com.¹⁶
 - b. **Chapter 13 cases:** Once the steps described above are complete, the Debtor shall serve on the Home Mortgage Creditor, co-borrowers or obligors on the applicable loan, and their counsel, if known, and file with the Court, a Notice and Motion for Loss Mitigation/Mediation according to the form attached as Exhibit H and a proposed order in the form attached as Exhibit I. A Certificate of Service shall be timely filed. For preconfirmation motions, the notice and motion should be served no later than 7 days after the filing of a Chapter 13 plan. If the loss mitigation/mediation process is not likely to conclude before the confirmation hearing, the Debtor should also consider the use of the plan language in paragraph no. 2 (below).
 - c. The applicable Home Mortgage Creditor, co-borrowers, and other obligors shall have 14 days from the date of service of the Notice and Motion to object. In the absence of an objection,

¹³ The term "loss mitigation" is intended to describe the full range of solutions that may avert the loss of a debtor's home to foreclosure, promote communication between parties, and reduce costs; for example, loan modification or refinancing, forbearance, short sale or surrender of property in satisfaction of debt.

¹⁴ If the Debtor does not earn sufficient income, Loss Mitigation/Mediation is not likely a viable option.

¹⁵ The online document preparation systems and portal described herein are provided by Default Mitigation Management, LLC ("DMM"). DMM is identified for use due to its experience and reasonable cost (\$40 for each Debtor's Prepared Package and \$25 for the portal submission by each party). Free training on the use of the portal provided by DMM is available to attorneys licensed for practice in this Court and all Home Mortgage Creditors. Registration for portal use can be completed online at <https://www.dclmwp.com> or by contacting DMM at 1-800-481-1013. The Court may, upon application and review, approve other service providers in which even such providers shall be listed on the Court's website.

¹⁶ Enter **scbkdocs40** for the \$40.00 rate.

the Court may grant, without a hearing, an Order Requiring Loss Mitigation/Mediation (hereinafter, “the Order”). Any objection must state specific reasons verified as accurate by counsel for the objecting party. Upon timely objection, a hearing shall be held on the date identified in the notice and all applicable parties and counsel shall attend.

- d. Debtor’s Counsel shall timely serve the Order on affected parties and file a Certificate of Service. Once the Order is issued, all communication between the parties regarding the loss mitigation review should be sent through a secure portal for document exchange DMM provides a secure portal at <https://www.dclmwp.com> (“Portal”). Following entry of an Order Requiring Loss Mitigation/Mediation, Debtor’s Counsel shall register for the Portal.
- e. Within 7 days after entry of the Order, the Home Mortgage Creditor (if not previously registered on the Portal) shall register to use the Portal and ensure that the Portal provider has been provided with any and all application forms and documentation requirements necessary for consideration of Loss Mitigation.¹⁷
- f. Within the later of 14 days after the entry of the Order or 7 days after the Home Mortgage Creditor has registered on the Portal, the Debtor shall:
 1. Upload the Debtor’s Prepared Package as well any other forms required by the Home Mortgage Creditor to the Portal; and
 2. Remit any required fees to DMM or other portal provider.
- g. The Home Mortgage Creditor shall, within 7 days after Debtor’s Counsel has submitted the Debtor’s Prepared Package and any additional required documentation to the Portal:
 1. Acknowledge receipt of the information on the Portal;
 2. Provide on the Portal all contact information of the representative in charge of the Debtor’s account
 3. Assign to the Portal the Home Mortgage Creditor’s designated counsel, if any; and
 4. Notify Debtor’s Counsel of any additional or updated information required to process the application.
- h. The Home Mortgage Creditor shall have a total of 120 days from entry of the Order to respond to the loss mitigation request by advising on all means of Loss Mitigation, including mortgage modification, or verify a denial. This time may be extended without an order of the Court for 60 additional days upon the mutual agreement of the parties **if posted on the Court’s docket by Debtor’s counsel.**
- i. If necessary, any party may request, or the Court may direct, the *ex parte* appointment of a mediator to facilitate discussions and resolve disputes raised by the parties. Costs for a mediator shall not, without court order, exceed \$300.00 per session, and shall be equally divided and paid in advance of the session by the parties. In the event a mediator is appointed, the mediator shall have 7 days to register to the Portal at no cost. Once registered, Debtor’s Counsel shall assign said mediator to the account on the Portal so that said mediator may review the file and have access to the account on the Portal. Each mediation session shall be conducted via telephone on a conference call established by the Debtor, and last no

¹⁷ Failure to timely register will result in a hearing being scheduled to consider sanctions, including attorney’s fees.

longer than one hour. The Debtor shall publish the phone number to the Portal not later than 7 days before the scheduled mediation. An expedited hearing may be requested by any party on issues not resolved by mediation.

- j. The Home Mortgage Creditor is obligated to inform the Court, the Debtor, and any participating co-borrower or obligor within 7 days if the loan is sold or securitized to another company during the Loss Mitigation/Mediation process. The transferee or servicer of the loan shall be advised of these requirements by the original Home Mortgage Creditor and shall be bound by all prior orders, agreements, forms, and documentation. The transferee or servicer shall register for the Portal within 7 days and the Home Mortgage Creditor shall transfer the Portal account to the transferee so that transferee may review all previously submitted transmissions and continue with the process.
- k. No later than 180 days after the entry of the Order, the Debtor shall submit a proposed Consent Order Allowing Mortgage Loan Modification for Court approval of any resolution or settlement reached during the loss mitigation or otherwise report to the Court on the loss mitigation process via the Mortgage Loan Modification Report using form attached as Exhibit J.
- l. Debtor's counsel shall be permitted to charge an attorney's fee for services provided under the Loss Mitigation/Mediation Program. In Chapter 13 cases, a \$1000 fee shall be allowed in addition to the no-look fee established under the guidelines for compensation for professionals.¹⁸ The fee provides additional compensation for all services through the completion of the loss mitigation process and includes:
 - a. Assembling and submitting Debtor's Prepared Package;
 - b. Filing of the Motion for Loss Mitigation/Mediation and proposed Order;
 - c. Filing of other required pleadings and preparation of proposed orders, as applicable;
 - d. Communicating with the Home Mortgage Creditor, co-borrower or obligor, and the Mediator;
 - e. Filing of the proposed Consent Order Allowing Mortgage Loan Modification or a Mortgage Loan Modification Report.

The fee may be charged upon the filing of the Consent Order Allowing Mortgage Loan Modification or a Mortgage Loan Modification Report indicating the final disposition of loss mitigation efforts, and an Attorney Fee Disclosure Statement. Upon submission of a Consent Order Allowing Mortgage Loan Modification or final Mortgage Loan Modification Report, Debtor's counsel certifies that the aforesaid listed services were performed and justify the fee.

2. **Within a Chapter 13 plan:** A mortgage modification process, in conjunction with a Loss Mitigation/Mediation Motion or otherwise, may be requested through a Chapter 13 Plan, subject to objection, by including the following language:

¹⁸ Alternatively, if seeking additional compensation, an application for supplemental fees may also be submitted according to the guidelines.

a. Option One (The Debtor is capable of making regular contract payments)

No less than 30 days before the first scheduled confirmation hearing, the Debtor will submit a complete application to [Home Mortgage Creditor] seeking a consensual modification of the Debtor's home mortgage loan through the Home Affordable Modification Program (HAMP) or other applicable program. The subject mortgage loan is secured by real property located at:

[Real Property Description]

Beginning on [date], the Debtor will pay regular contract payments directly to [Home Mortgage Creditor]. The Debtor will be responsible for payment of any arrearage directly to [Home Mortgage Creditor] if not cured through a loan modification process. No payment will be made by the Trustee on this secured claim.

Upon approval of a loan modification, the Debtor shall submit a proposed Consent Order Allowing Mortgage Loan Modification for consideration by the Court. If the loan modification request is denied, the Debtor shall timely file a Mortgage Loan Modification Report indicating that denial with the Court.

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

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

No less than 30 days before the first scheduled confirmation hearing, the Debtor will submit a complete application to [Home Mortgage Creditor] seeking a consensual modification of the Debtor's home mortgage loan through the Home Affordable Modification Program (HAMP) or other applicable program. The subject mortgage loan is secured by real property located at:

[Real Property Description]

Beginning on [date], the Debtor will commence payments directly to [Home Mortgage Creditor] in an amount equal to the payment called for under the trial period payment plan of the applicable modification program. The Debtor shall timely make any trial period payments required by the application process.

If the mortgage loan modification is approved, the Debtor shall directly pay [creditor]'s allowed mortgage claim, including both prepetition and post petition amounts. No payment will be made by the Trustee on the secured claim. Upon approval of a loan modification, the Debtor shall submit a proposed Consent Order Allowing Mortgage Loan Modification for consideration by the Court. If the loan modification request is denied, the Debtor shall timely file a Mortgage Loan Modification Report indicating that denial with the Court.

In the event that (1) the request for mortgage loan modification (and any necessary documentation) is not submitted or is denied or (2) the Debtor fails to timely make the

above referenced trial period payments, the Home Mortgage Creditor may, after 10 days' notice to the Debtor, Debtor's counsel, and the Trustee, submit an affidavit and proposed order seeking relief from the stay.

3. **By Consent Order:**

- a. Upon a modification/loss mitigation agreement being reached by the above processes or otherwise, the modification/loss mitigation shall be submitted for approval by way of a proposed Consent Order Allowing Mortgage Loan Modification, which specifies the terms of the modification agreement and provides:
 1. That there will be no extension of additional funds beyond what is already owed;
 2. That payments to other lien holders under the Plan will not be affected;
 3. That the proposed modification has no detrimental effect on other creditors and is believed to be in the best interest of the debtor(s) and the estate;
 4. Whether any payments from the Chapter 13 Trustee to the Home Mortgage Creditor whose loan is to be modified will continue or terminate upon entry of the order; and
 5. A statement setting forth or attaching a short summary of the specific benefits received as a result of Loss Mitigation or mortgage modification, including deferral or forgiveness of arrearage/debt or change in interest rate, term, or payment amount.
- b. 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.
- c. Dismissal of the bankruptcy case may not be a condition of loss mitigation, including modification of mortgage loan, unless ordered by the Court after consideration at an actual hearing.

Reporting and Events

Reports required by any of the above procedures shall be reported by filing the document attached as Exhibit J, using the CM/ECF event, *Mortgage Loan Modification Report*. The Notice and Motion for Loss Mitigation/Mediation should be filed using the *Notice and Motion for Loss Mitigation/Mediation* event. A proposed Consent Order Allowing Mortgage Loan Modification shall be submitted under the CM/ECF event, *Proposed Consent Order Modifying Mortgage (no motion filed)*.

EXHIBIT I

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**ORDER REQUIRING
LOSS MITIGATION/MEDIATION**

A Motion for Loss Mitigation/Mediation was filed by [Debtor Name] (“Debtor”) on [Date] _____, 2014 and the parties have had notice and an opportunity to object. It appearing that no objections were filed or that any objections filed have been withdrawn or otherwise resolved, it is hereby

ORDERED that the Debtor and _____ (“Home Mortgage Creditor”) [and additional parties, if any] are directed to participate in the Loss Mitigation/Mediation Program; it is further

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

ORDERED that the Debtor and the Home Mortgage Creditor shall observe the following deadlines:

- (1) Debtor’s Counsel shall timely serve this Order on the applicable parties.
- (2) If not previously registered, the Home Mortgage Creditor and its designated counsel shall, within seven (7) days, register for the Portal³ and ensure that it has provided to the approved Portal provider all application forms and documentation requirements necessary for consideration of Loss Mitigation, including mortgage modification.
- (3) The Debtor shall upload the prepared mortgage modification package described in Chambers Guidelines to the Portal within the later of fourteen (14) days after the entry of this Order or 7 days after the Home Mortgage Creditor registers to the Portal.
- (4) Once the Order has issued, all communication between the parties regarding the loss mitigation review should be sent through the Portal.
- (5) Within seven (7) days after Debtor’s submission to the Home Mortgage Creditor on the portal, the Home Mortgage Creditor shall take the following actions on the Portal:
 - a. acknowledge receipt of the Debtor’s package;
 - b. give the Debtor notice of any additional or updated documentation necessary for consideration of Loss Mitigation, including mortgage modification;

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

- c. assign its designated counsel to the account on the Portal; and
 - d. provide the name, address and direct telephone number of the person responsible for the review on the Portal.
- (6) A mortgage modification or other form of loss mitigation shall be agreed to or denied within 180 days of the entry of this Order unless extended by this Court.
- (7) Other requirements set forth in Chambers Guidelines are incorporated herein and shall be effective.

It is further **ORDERED** that the parties must submit any settlement to the Court in the form of a proposed Consent Order Allowing Mortgage Loan Modification specifying all relevant terms. Loss Mitigation, including modification of the mortgage loan, may not be conditioned upon dismissal of the bankruptcy case, unless allowed by the Court after an actual hearing; and it is further

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

AND IT IS SO ORDERED.

EXHIBIT J

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

IN RE:

[Debtor Name],

Debtor(s).

C/A No. _____

Chapter ____

**MORTGAGE LOAN
MODIFICATION REPORT**

Name of Home Mortgage Creditor: _____

Property Address: _____

Last Four Digits of Account Number of Loan: _____

Date of Entry of Order Requiring Loss Mitigation/Mediation: _____

Date of Entry of Consent Order Allowing Mortgage Loan Modification (*if any*): _____

State the status of the parties' efforts to negotiate mortgage loan modification/loss mitigation (please check the appropriate box below):

- | | |
|---|---|
| <input type="checkbox"/> Loan modification. | <input type="checkbox"/> Short sale. |
| <input type="checkbox"/> Loan refinance. | <input type="checkbox"/> Surrender of property. |
| <input type="checkbox"/> Forbearance. | <input type="checkbox"/> No agreement has been reached. |
| <input type="checkbox"/> Other: _____ | |

If the parties' efforts have been successful, state or attach a short summary of the specific benefits received as a result of Loss Mitigation or mortgage modification, including deferral or forgiveness of arrearage/debt or change in interest rate, term, and/or payment amount.

Dated:

Signature: _____