

## HOME MORTGAGE MODIFICATION

Parties may seek court approval of consensual modifications of home mortgage loans in one or all of the following ways:

1. **Loss Mitigation/Mediation Program.** Individuals in bankruptcy cases of any chapter, including joint debtors, whose cases are assigned to the undersigned are eligible to participate in the Loss Mitigation/Mediation Program.<sup>13</sup> If an order would be helpful to promote communication with the Home Mortgage Creditor, the Debtor may file a Notice and Motion for Loss Mitigation/Mediation using the form attached as Exhibit H. The procedures for participation in the Loss Mitigation/Mediation Program are as follows:
  - a. The Debtor shall prepare, with the assistance of Debtor's Counsel, the loan modification forms (the "Debtor's Prepared Package") provided by Default Mitigation Management, LLC ("DMM")<sup>14</sup> for the portal, or an equivalent request that meets the guidelines of the Making Home Affordable Program.
  - b. The Debtor shall provide to Debtor's Counsel all of the required supporting documentation for the Debtor's Prepared Package.
  - c. Debtor's Counsel must determine that a mortgage modification is feasible, with 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. If the Debtor does not earn sufficient income, Loss Mitigation/Mediation is not likely a viable option.
  - d. For preconfirmation motions in Chapter 13 cases: No later than 7 days after the filing of a Chapter 13 plan, 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.
  - e. The applicable Home Mortgage Creditor shall have 14 days from the date of service of the Notice and Motion to object. In the absence of an objection, 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.

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

<sup>14</sup> DMM is identified for use due to its experience and reasonable cost (\$25 per request). 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.

- f. Upon the entry of the Order, all communication between the parties shall be sent through the portal. Debtor's Counsel shall timely serve the Order on affected parties and file a Certificate of Service.
- g. Within 7 days after entry of the Order, the Home Mortgage Creditor and any co-borrower or obligor who chooses to participate shall:
  - 1. 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;<sup>15</sup>
  - 2. Designate a representative who has full settlement authority; and
  - 3. Provide all contact information of the representative, including phone number and email address.
- h. Within 14 days after entry of the Order, the Debtor shall:
  - 1. Upload the Debtor's Prepared Package to the portal;
  - 2. Remit any required fees to the portal provider.
- i. The Home Mortgage Creditor shall, within 7 days after Debtor's Counsel has submitted the Prepared Package and any additional required documentation to the portal:
  - 1. Acknowledge receipt of the information;
  - 2. Report the Home Mortgage Creditor's designated counsel, if any; and
  - 3. Notify the Debtor's counsel and participating co-borrower or obligor of any additional or updated information required to process the application.
- j. 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 as posted on the Court's docket by Debtor's counsel.
- k. 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 exceed \$300.00 per session, without court order, 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. Each mediation session shall be conducted via telephone on a conference call established by the Debtor, and last no longer than one hour. The Debtor shall publish the phone number to the portal not later than 7 days before the scheduled mediation.
- l. 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

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<sup>15</sup> Failure to timely register could result in a hearing being scheduled to consider sanctions, including attorney's fees.

these requirements by the original Home Mortgage Creditor and shall be bound by all prior actions, agreements, forms, and documentation. The transferee or servicer shall register for the portal within 7 days and transfer all previously submitted transmissions.

- m. No later than 180 days after the entry of the Order, 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.
- n. Debtor's counsel shall be permitted to charge an attorney's fee for efforts made in connection with 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.<sup>16</sup> 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 may be requested through a Chapter 13 Plan, subject to objection, by including the following language:
  - a. Option One (The Debtor is capable of making regular contract payments)

No later than 30 days after the filing of the petition, the debtor will submit a complete application to the [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.

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<sup>16</sup> Alternatively, if seeking additional compensation, an application for supplemental fees may also be submitted according to the guidelines.

Upon approval of a loan modification, the debtor may submit a proposed Consent Order Allowing Mortgage Loan Modification for consideration by the Court or shall submit a Mortgage Loan Modification Report detailing the terms of the modified mortgage. If the loan modification request is denied, the debtor shall timely file a 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 depends upon a consensual home mortgage loan modification.

No later than 30 days after the filing of the petition, the debtor will submit a complete application to [Home Mortgage Creditor] seeking a consensual modification of the debtor's residential 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 may submit a proposed Consent Order Allowing Mortgage Loan Modification for consideration by the Court or shall submit a Mortgage Loan Modification Report detailing the terms of the modified mortgage. If the loan modification request is denied, the debtor shall timely file a report indicating that denial with the Court.

In the event that (1) the request for mortgage loan modification is denied, (2) the debtor fails to timely make the above referenced payments or the trial period payments, or (3) the loan modification has not been approved, in good faith, within 120 days of the date of the first scheduled confirmation hearing, as certified by [creditor], relief from stay may be granted to [creditor] without further hearing upon the filing of an affidavit of default by [creditor] and entry of a proposed order by the Court.

3. By order of the Court:

- a. Upon a modification agreement being reached, the modification may be approved by 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; and
  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.
- 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 an actual hearing.
4. Reports required by any of the above procedures should be filed 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 H**

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

IN RE:

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

[Debtor Name],

Chapter \_\_\_\_

Debtor(s).

**NOTICE AND MOTION FOR LOSS  
MITIGATION MEDIATION  
PURSUANT TO JUDGE WAITES'  
CHAMBERS GUIDELINES**

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

The debtor, through counsel, hereby moves the Court for an Order Requiring Loss Mitigation Mediation with respect to the following property:

*[Identify the Property]*

*[Loan Number]*

*[Home Mortgage Creditor's Name and Address]*

The debtor requests an order directing the parties to participate in the Loss Mitigation Mediation Program as set forth in Judge Waites' Chambers Guidelines and requiring the parties to use the mortgage modification portal operated by Default Mitigation Management, LLC while participating in Program.

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

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

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

Address

Email

**EXHIBIT 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 Procedures set forth in Judge Waites’ Chambers Guidelines (available at [www.scb.uscourts.gov/ChambersJW.htm](http://www.scb.uscourts.gov/ChambersJW.htm)) and engage in the Loss Mitigation/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) The Home Mortgage Creditor and any participating co-borrower or obligor shall register for the portal and provide all application forms and documentation requirements necessary for consideration of Loss Mitigation, including mortgage modification, within seven (7) days. As part of this obligation, the Home Mortgage Creditor shall furnish notice of the name, address and direct telephone number of the person who has full settlement authority.
- (3) The Debtor shall submit the prepared mortgage modification package described in Chambers Guidelines to the portal within fourteen (14) days.
- (4) The Home Mortgage Creditor shall acknowledge receipt of the Debtor’s package within seven (7) days after its submission and give the Debtor notice of any additional or updated documentation necessary for consideration of Loss Mitigation, including mortgage modification.
- (5) A mortgage modification or other form of loss mitigation shall be agreed to or denied within one-hundred and twenty (120) days unless extended for up to 60 additional days by mutual agreement of the parties as posted on the Court’s docket by Debtor’s Counsel.

(6) 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*): \_\_\_\_\_

***Participation the Loss Mitigation/Mediation Program has resulted in the following (please check the appropriate box below):***

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

Provide or attach a short summary of the benefits received as a result of Loss Mitigation or mortgage modification if not provided in any prior settlement order submitted to the Court.

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