

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: :
 : GENERAL ORDER #M-364
Adoption of Loss Mitigation Program Procedures :
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By resolution of the Board of Judges of the United States Bankruptcy Court for the Southern District of New York, it is decided that a uniform, comprehensive, court-supervised loss mitigation program will facilitate consensual resolutions for individual debtors whose residential real property is at risk of loss to foreclosure. A loss mitigation program will avoid the need for various types of bankruptcy litigation, reduce costs to debtors and secured creditors, and enable debtors to reorganize or otherwise address their most significant debts and assets under the United States Bankruptcy Code. Accordingly, the "Loss Mitigation Program Procedures" annexed to this order are adopted, pursuant to 11 U.S.C. § 105(a).

It is also decided that the Loss Mitigation Program Procedures and forms for requesting loss mitigation shall be available in the clerk's office and on the court's web site. The Court may modify the Loss Mitigation Program Procedures from time to time by duly adopted General Order, making the revised Loss Mitigation Program Procedures available in the clerk's office and on the court's web site immediately.

NOW, THEREFORE, IT IS ORDERED that the Loss Mitigation Program Procedures are adopted, effective January 5, 2009.

Dated: New York, New York
December 18, 2008

/s/ Stuart M. Bernstein
STUART M. BERNSTEIN
Chief Bankruptcy Judge

LOSS MITIGATION PROGRAM PROCEDURES

I. PURPOSE

The Loss Mitigation Program is designed to function as a forum for debtors and lenders to reach consensual resolution whenever a debtor's residential property is at risk of foreclosure. The Loss Mitigation Program aims to facilitate resolution by opening the lines of communication between the debtors' and lenders' decision-makers. While the Loss Mitigation Program stays certain bankruptcy deadlines that might interfere with the negotiations or increase costs to the loss mitigation parties, the Loss Mitigation Program also encourages the parties to finalize any agreement under bankruptcy court protection, instead of seeking dismissal of the bankruptcy case.

II. LOSS MITIGATION DEFINED

The term "loss mitigation" is intended to describe the full range of solutions that may avert either the loss of a debtor's property to foreclosure, increased costs to the lender, or both. Loss mitigation commonly consists of the following general types of agreements, or a combination of them: loan modification, loan refinance, forbearance, short sale, or surrender of the property in full satisfaction. The terms of a loss mitigation solution will vary in each case according to the particular needs and goals of the parties.

III. ELIGIBILITY

The following definitions are used to describe the types of parties, properties and loans that are eligible for participation in the Loss Mitigation Program:

A. DEBTOR

The term "Debtor" means any individual debtor in a case filed under Chapter 7, 11, 12 or 13 of the Bankruptcy Code, including joint debtors.

B. PROPERTY

The term "Property" means any real property or cooperative apartment used as a principal residence in which an eligible Debtor holds an interest.

C. LOAN

The term "Loan" means any mortgage, lien or extension of money or credit secured by eligible Property or stock shares in a residential cooperative, regardless of whether or not the Loan (1) is considered to be "subprime" or "non-traditional," (2) was in foreclosure prior to the bankruptcy filing, (3) is the first or junior mortgage or lien on the Property, or (4) has been "pooled," "securitized," or assigned to a servicer or to a trustee.

D. CREDITOR

The term "Creditor" refers to any holder, mortgage servicer or trustee of an eligible Loan.

IV. ADDITIONAL PARTIES

A. OTHER CREDITORS

Where it may be necessary or desirable to obtain a global resolution, any party may request, or the bankruptcy court may direct, that multiple Creditors participate in loss mitigation.

B. CO-DEBTORS AND THIRD PARTIES

Where the participation of a co-debtor or other third party may be necessary or desirable, any party may request, or the bankruptcy court may direct, that such party participate in loss mitigation, to the extent that the bankruptcy court has jurisdiction over the party, or if the party consents to participation in loss mitigation.

C. CHAPTER 13 TRUSTEE

The Chapter 13 Trustee has the duty in Section 1302(b)(4) of the Bankruptcy Code to “advise, other than on legal matters, and assist the debtor in performance under the plan.” Any party may request, or the bankruptcy court may direct, the Chapter 13 Trustee to participate in loss mitigation to the extent that such participation would be consistent with the Chapter 13 Trustee’s duty under the Bankruptcy Code.

D. MEDIATOR

At any time, a Debtor or Creditor participating in the Loss Mitigation Program may request, or the bankruptcy court may order, the appointment of an independent mediator from the United States Bankruptcy Court for the Southern District of New York’s Register of Mediators, which may be viewed at <http://www.nysb.uscourts.gov/mediators.html>. A mediator will assist in loss mitigation in accordance with these Procedures and with the United States Bankruptcy Court of the Southern District of New York Amended General Order for the Adoption of Procedures Governing Mediation of Matters in Bankruptcy Cases and Adversary Proceedings dated January 17, 1995 (General Order M-143), as amended on October 20, 1999 (General Order M-211).

V. COMMENCEMENT OF LOSS MITIGATION

Parties are encouraged to request loss mitigation as early in the case as possible, but loss mitigation may be initiated at any time, by any of the following methods:

A. BY THE DEBTOR

1. In Section C of the Model Chapter 13 Plan, a Chapter 13 Debtor may indicate an interest in discussing loss mitigation with a particular Creditor. The Creditor shall have 21 days to object. If no objection is filed, the bankruptcy court may enter an order (a “Loss Mitigation Order”).
2. A Debtor may file a request for loss mitigation with a particular Creditor. The Creditor shall have 14 days to object. If no objection is filed, the bankruptcy court may enter a Loss Mitigation Order.

3. If a Creditor has filed a motion requesting relief from the automatic stay pursuant to Section 362 of the Bankruptcy Code (a “Lift-Stay Motion”), at any time prior to the conclusion of the hearing on the Lift-Stay Motion, the Debtor may file a request for loss mitigation. The Debtor and Creditor shall appear at the scheduled hearing on the Lift-Stay Motion, and the bankruptcy court will consider the loss mitigation request and any opposition by the Creditor.

B. BY A CREDITOR

A Creditor may file a request for loss mitigation. The Debtor shall have 7 days to object. If no objection is filed, the bankruptcy court may enter a Loss Mitigation Order.

C. BY THE BANKRUPTCY COURT

The bankruptcy court may enter a Loss Mitigation Order at any time, provided that the parties that will be bound by the Loss Mitigation Order (the “Loss Mitigation Parties”) have had notice and an opportunity to object.

D. OPPORTUNITY TO OBJECT

Where any party files an objection, a Loss Mitigation Order shall not be entered until the bankruptcy court has held a hearing to consider the objection. At the hearing, a party objecting to loss mitigation must present specific reasons why it believes that loss mitigation would not be successful. If a party objects on the grounds that loss mitigation has been requested in bad faith, the assertion must be supported by objective reasons.

VI. LOSS MITIGATION ORDER

A. DEADLINES

A Loss Mitigation Order shall contain deadlines for all of the following:

1. The date by which the Loss Mitigation Parties shall designate contact persons and disclose contact information, if this information has not been previously provided.
2. The date by which each Creditor must initially contact the Debtor.
3. The date by which each Creditor must transmit any information request to the Debtor.
4. The date by which the Debtor must transmit any information request to each Creditor.
5. The date by which a written report must be filed or the date and time set for a status conference at which a verbal report must be provided. Whenever possible, in a Chapter 13 case the status conference will coincide with the first date set for confirmation of the Chapter 13 plan, or an adjourned confirmation hearing. Where a written report is required, it should generally be filed not later than 7 days after the conclusion of the initial loss mitigation session.
6. The date when the loss mitigation period will terminate, unless extended.

B. EFFECT

Whenever a Loss Mitigation Order is entered, the following shall apply to the Loss Mitigation Parties:

1. Each Creditor is authorized to contact the Debtor directly. It shall be presumed that such communications do not violate the automatic stay.
2. Except where necessary to prevent irreparable injury, loss or damage, a Creditor shall not file a Lift-Stay Motion during the loss mitigation period. Any Lift-Stay Motion filed by the Creditor prior to the entry of the Loss Mitigation Order shall be adjourned to a date after the last day of the loss mitigation period, and the stay shall be extended pursuant to Section 362(e) of the Bankruptcy Code.
3. In a Chapter 13 case, the deadline by which a Creditor must object to confirmation of the Chapter 13 plan shall be extended to permit the Creditor an additional 14 days after the termination of loss mitigation, including any extension of the loss mitigation period.
4. All communications and information exchanged by the Loss Mitigation Parties during loss mitigation will be inadmissible in any subsequent proceeding pursuant to Federal Rule of Evidence 408.

VII. DUTIES UPON COMMENCEMENT OF LOSS MITIGATION

Upon entry of a Loss Mitigation Order, the Loss Mitigation Parties shall have the following duties:

A. GOOD FAITH

The Loss Mitigation Parties shall negotiate in good faith. A party that fails to participate in loss mitigation in good faith may be subject to sanctions.

B. CONTACT INFORMATION

1. The Debtor: Unless the Debtor has already done so in the Chapter 13 plan or as part of a request for loss mitigation, the Debtor shall provide written notice to each Creditor, indicating the manner in which the Creditor should contact the Debtor.
2. The Creditor: Unless a Creditor has already done so as part of a request for loss mitigation, each Creditor shall provide written notice to the Debtor, identifying the name, address and direct telephone number of the contact person who has full settlement authority.

C. STATUS REPORT

The Loss Mitigation Parties shall provide either a written or verbal report to the bankruptcy court regarding the status of loss mitigation within the time set by the bankruptcy court in the Loss Mitigation Order. The status report shall state whether one or more loss mitigation sessions have been conducted, whether a resolution was reached, and whether one or more of the Loss Mitigation Parties believe that additional loss mitigation sessions would be likely to result in either a partial or complete resolution. A status report may include a request for an extension of the loss mitigation period.

D. BANKRUPTCY COURT APPROVAL

The Loss Mitigation Parties shall seek bankruptcy court approval of any resolution or settlement reached during loss mitigation.

VIII. LOSS MITIGATION PROCESS

A. INITIAL CONTACT

Following entry of a loss mitigation order, the contact person designated by each Creditor shall contact the Debtor and any other Loss Mitigation Party within the time set by the bankruptcy court. The Debtor may contact any other Loss Mitigation Party at any time. The purpose of the initial contact is to create a framework for the discussion at the loss mitigation session and to ensure that each of the Loss Mitigation Parties will be prepared to participate in the loss mitigation session – it is not intended to limit additional issues or proposals that may arise during the session. During the initial contact phase, the Loss Mitigation Parties should discuss the following:

1. The time and method for conducting the loss mitigation sessions.
2. The types of loss mitigation solutions under consideration by each party.

3. A plan for the exchange of required information prior to the loss mitigation session, including the due date for the Debtor to complete and return any information request or other loss mitigation paperwork that each Creditor may require. *All information should be provided at least 7 days prior to the loss mitigation session.*

B. LOSS MITIGATION SESSIONS

Loss mitigation sessions may be conducted in person, telephonically or via video conference. At the conclusion of each loss mitigation session, the Loss Mitigation Parties should discuss whether additional sessions are necessary and set the time and method for conducting any additional sessions, including a schedule for the exchange of any further information or documentation that may be required.

C. BANKRUPTCY COURT ASSISTANCE

At any time during the loss-mitigation period, a Loss Mitigation Party may request a settlement conference or status conference with the bankruptcy court.

D. SETTLEMENT AUTHORITY

Each Loss Mitigation Party must have a person with full settlement authority present during a loss mitigation session. During a status conference or settlement conference with the bankruptcy court, the person with full settlement authority must either attend the conference in person or be available by telephone or video conference beginning 30 minutes prior to the start of the conference.

IX. DURATION, EXTENSION AND EARLY TERMINATION

A. INITIAL PERIOD

The initial loss mitigation period shall be set by the bankruptcy court in the Loss Mitigation Order.

B. EXTENSION

1. Agreement: The Loss Mitigation Parties may agree to an extension of the loss mitigation period. The Loss Mitigation Parties shall request an extension in writing, filed on the docket in the main bankruptcy case and served on all parties in interest, who shall have three days to object to a request for extension of the loss mitigation period. The bankruptcy court may grant a request for extension of the loss mitigation period for cause.
2. No Agreement: Where a Loss Mitigation Party does not consent to the request for an extension of the loss mitigation period, the bankruptcy court shall schedule a hearing to consider whether further loss mitigation sessions are likely to be successful. The bankruptcy court may order a reasonable extension if it appears that (1) a further loss mitigation session is likely to result in a complete or partial resolution that will provide a substantial benefit to a Loss Mitigation Party, (2) the party opposing the extension has not participated in good faith or has failed in a material way to comply with these Procedures, or (3) the party opposing the extension would not be prejudiced.

C. EARLY TERMINATION

1. Upon Request of a Loss Mitigation Party: A Loss Mitigation Party may request that the loss mitigation period be terminated and shall state the reasons for the request. Except where immediate termination is necessary to prevent irreparable injury, loss or damage, the request shall be made on notice to all other Loss Mitigation Parties, and the bankruptcy court may schedule a hearing to consider the termination request.
2. Dismissal of the Bankruptcy Case:
 - a. Other than at the request of a Chapter 13 Debtor, or the motion of the United States Trustee or Trustee for failure to comply with requirements under the Bankruptcy Code: Except where a Chapter 13 Debtor requests voluntary dismissal, or upon motion, a case shall not be dismissed during the loss mitigation period unless the Loss Mitigation Parties have provided the bankruptcy court with a status report that is satisfactory to the court. The bankruptcy court may schedule a further status conference with the Loss Mitigation Parties prior to dismissal of the case.
 - b. Upon the request of a Chapter 13 Debtor: **A Debtor is not required to request dismissal of the bankruptcy case as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.** Where a Chapter 13 Debtor requests voluntary dismissal of the bankruptcy case during the loss mitigation period, the Debtor's dismissal request shall indicate whether the Debtor agreed to any settlement or resolution from a Loss Mitigation Party during the loss mitigation period or intends to accept an offer of settlement made by a Loss Mitigation Party during the loss mitigation period.
 - c. Notice: If a bankruptcy case is dismissed for any reason during the loss-mitigation period, the Clerk of the Court shall file a notice on the docket indicating that loss mitigation efforts were ongoing at the time the bankruptcy case was dismissed.

X. SETTLEMENT

The bankruptcy court will consider any agreement or resolution reached during loss mitigation (a "Settlement") and may approve the Settlement, subject to the following provisions:

1. Implementation: A Settlement may be noticed and implemented in any manner permitted by the Bankruptcy Code and Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules"), including, but not limited to, a stipulation, sale, plan of reorganization or amended plan of reorganization.
2. Fees, Costs or Charges: If a Settlement provides for a Creditor to receive payment or reimbursement of any fee, cost or charge that arose from loss mitigation, such fees, costs or charges shall be disclosed to the Debtor and to the bankruptcy court prior to approval of the Settlement.

3. Signatures: Consent to the Settlement shall be acknowledged in writing by (1) the Creditor representative who participated in loss mitigation, (2) the Debtor, and (3) the Debtor's attorney, if applicable.
4. Hearing: Where a Debtor is represented by counsel, a Settlement may be approved by the bankruptcy court without further notice, or upon such notice as the bankruptcy court directs, unless additional notice or a hearing is required by the Bankruptcy Code or Bankruptcy Rules. Where a Debtor is not represented by counsel, a Settlement shall not be approved until after the bankruptcy court has conducted a hearing at which the Debtor shall appear in person.
5. Dismissal Not Required: **A Debtor is not required to request dismissal of the bankruptcy case in order to effectuate a Settlement.** In order to ensure that the Settlement is enforceable, the Loss Mitigation Parties should seek bankruptcy court approval of the Settlement. Where the Debtor requests or consents to dismissal of the bankruptcy case as part of the Settlement, the bankruptcy court may approve the Settlement as a "structured dismissal," if such relief complies with the Bankruptcy Code and Bankruptcy Rules.

XI. COORDINATION WITH OTHER PROGRAMS

[Provision may be added in the future to provide for coordination with other loss mitigation programs, including programs in the New York State Unified Court System.]

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x
In re:

Chapter __

Case No. __-____ (___)

Debtor(s).

-----x

LOSS-MITIGATION REQUEST – BY THE DEBTOR

I am a Debtor in this case. I hereby request loss mitigation with respect to *[Identify the property, loan and creditor(s) for which you are requesting loss mitigation]*:

SIGNATURE

I understand that if the Court orders loss mitigation in this case, I will be expected to comply with the Loss Mitigation Procedures. I agree to comply with the Loss Mitigation Procedures, and I will participate in loss mitigation in good faith. I understand that loss mitigation is voluntary for all parties, and that I am not required to enter into any agreement or settlement with any other party as part of this loss mitigation. I also understand that no other party is required to enter into any agreement or settlement with me. I understand that **I am not required to request dismissal of this case** as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.

Sign: _____ Date: _____, 2008

Print Name: _____

Telephone Number: _____

E-mail address (if any): _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter __

Case No. __-____ (___)

Debtor(s).

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LOSS-MITIGATION REQUEST – BY A CREDITOR

I am a creditor (including a holder, servicer or trustee of a mortgage or lien secured by property used by the Debtor as a principal residence) of the Debtor in this case. I hereby request loss mitigation with respect to *[Identify the property, loan and creditor(s) for which you are requesting loss mitigation]*:

SIGNATURE

I have reviewed the Loss Mitigation Procedures, and I understand that if the Court orders loss mitigation in this case, I will be bound by the Loss Mitigation Procedures. I agree to comply with the Loss Mitigation Procedures, and I will participate in loss mitigation in good faith. If loss mitigation is ordered, I agree to provide the Court with a written or verbal status report stating whether or not the parties participated in one or more loss mitigation sessions, whether or not a settlement was reached, and whether negotiations are ongoing. I agree that **I will not require the Debtor to request or cause dismissal of this case** as part of any resolution or settlement that is offered or agreed to during the loss mitigation period.

Sign: _____ Date: _____, 2008

Print Name: _____

Title: _____

Firm or Company: _____

Telephone Number: _____

E-mail address (if any): _____

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re:

Chapter __

Case No. __-____ (___)

Debtor(s).
-----X

LOSS-MITIGATION ORDER

- A Loss Mitigation Request¹ was filed by the debtor on [Date] _____, 2009.
- A Loss Mitigation Request was filed by a creditor on [Date] _____, 2009.
- The Court raised the possibility of loss mitigation, and the parties have had notice and an opportunity to object.

Upon the foregoing, it is hereby

ORDERED, that the following parties (collectively, the "Loss Mitigation Parties") are directed to participate in loss mitigation:

1. The Debtor
2. _____, the Creditor with respect to
_____ [describe Loan and/or Property].
3. [Additional parties, if any]

It is further **ORDERED**, that the Loss Mitigation Parties shall comply with the Loss Mitigation Procedures annexed to this Order; and it is further

ORDERED, that the Loss Mitigation Parties shall observe the following deadlines:

1. Each Loss Mitigation Party shall designate contact persons and disclose contact information by _____ [suggested time is 7 days], unless this information has been previously provided. As part of this obligation, a **Creditor shall furnish each Loss Mitigation Party with written notice of the name, address and direct telephone number of the person who has full settlement authority.**
2. Each Creditor that is a Loss Mitigation Party shall contact the Debtor within **14 days of the date of this Order.**
3. Each Loss Mitigation Party must make their information request, if any, within **14 days of the date of this Order.**
4. Each Loss Mitigation Party shall respond to an information request within **14 days after an information request is made, or 7 days prior to the Loss Mitigation Session, whichever is earlier.**

¹ All capitalized terms have the meanings defined in the Loss Mitigation Procedures.

5. The Loss Mitigation Session shall be scheduled not later than _____ [*suggested time is within 35 days of the date of the order*].
6. The loss mitigation period shall terminate on _____ [*suggested time is within 42 days of the date of the order*], unless extended as provided in the Loss Mitigation Procedures.

It is further **ORDERED**, that a status conference will be held in this case on _____ [*suggested time is within 42 days of the date of the order*] (the “Status Conference”). The Loss Mitigation Parties shall appear at the Status Conference and provide the Court with a verbal Status Report unless a written Status Report that is satisfactory to the Court has been filed not later than 7 days prior to the date of the Status Conference and requests that the Status Conference be adjourned or cancelled; and it is further

ORDERED, that at the Status Conference, the Court may consider a Settlement reached by the Loss Mitigation Parties, or may adjourn the Status Conference if necessary to allow for adequate notice of a request for approval of a Settlement; and it is further

ORDERED, that any matters that are currently pending between the Loss Mitigation Parties (such as motions or applications, and any objection, opposition or response thereto) are hereby adjourned to the date of the Status Conference to the extent those matters concern (1) relief from the automatic stay, (2) objection to the allowance of a proof of claim, (3) reduction, reclassification or avoidance of a lien, (4) valuation of a Loan or Property, or (5) objection to confirmation of a plan of reorganization; and it is further.

ORDERED, that the time for each Creditor that is a Loss Mitigation Party in this case to file an objection to a plan of reorganization in this case shall be extended until 14 days after the termination of the loss mitigation period, including any extension of the Loss Mitigation period.

Dated: Poughkeepsie, New York
_____, 2009

BY THE COURT

United States Bankruptcy Judge