

C. CHAPTER 12 & CHAPTER 13 TRUSTEES

In a chapter 12 or 13 case, the standing trustee may participate in the Loss Mitigation Program to the extent that such participation is consistent with the trustee's duties under, respectively, 11 U.S.C. §§ 1202(b) or 1302(b)(4).

A Loss Mitigation Order shall provide that, in a chapter 12 or 13 case, the standing trustee may participate in Loss Mitigation, including—but not necessarily limited to—appearing at the Status Conference and filing a response, if any, to the Creditor's motion to terminate Loss Mitigation made pursuant to section IX of these Procedures. The standing trustee need not make a specific request in order to participate in Loss Mitigation.

V. COMMENCEMENT OF LOSS MITIGATION

Parties are encouraged to request to enter into the Loss Mitigation Program as early in the case as possible. ~~Generally, a~~ request for Loss Mitigation may be made at any time during the pendency of the case except. ~~However,~~ when ~~there is a pending~~ a motion pursuant to 11 U.S.C. § 362(d) for relief from the automatic stay ("Motion for Relief from Stay") as to the Property is pending or has been granted, a request may be ~~presented to the court~~ made only as provided in subsections (A)(2), (A)(3) and (B)(2). ~~Parties are encouraged to request to enter into the Loss Mitigation Program as early in the case as possible.~~

A. BY WRITTEN REQUEST OF THE DEBTOR

1. Generally

Except as provided in subsection (A)(2) and (A)(3), a Debtor may file at any time during the pendency of the case a completed Loss Mitigation Request by Debtor(s) and Certificate of Service to enter into the Loss Mitigation Program with a Creditor. In a chapter 12 or 13 proceeding, the Debtor's plan payments or such modified payments as agreed to by the standing trustee must be current at the time Loss Mitigation is requested. A separate Loss Mitigation Request by Debtor(s) and Certificate of Service must be filed for each Loan subject to Loss Mitigation. The Debtor shall serve the Loss Mitigation Request by Debtor(s) and Certificate of Service on the case trustee and the named Creditor pursuant to Rule 7004 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rules") and, if a proof of claim has been filed, on the individual who signed the proof of claim by first class mail.

The Creditor shall have 14 days to file and serve an Objection to Loss Mitigation Request and a Notice of Hearing on Objection to Loss Mitigation Request and Certificate

of Service on 14 days' notice to the Debtor, Debtor's attorney, and the case trustee. If an [Objection to Loss Mitigation Request](#) and a [Notice of Hearing on Objection to Loss Mitigation Request and Certificate of Service](#) are not filed, the court may enter a [Loss Mitigation Order](#).

2. When a Motion for Relief from Stay is Pending as to the Property

The Debtor may include a [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) as part of a timely response to a Motion for Relief from Stay in the manner provided below:

- a. The Debtor shall state in the response to the Motion for Relief from Stay that the Debtor wishes to enter Loss Mitigation with the Creditor and that a completed [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) is attached as an exhibit thereto for the court's consideration; **and**
- b. The Debtor shall allege in the response facts sufficient to support the conclusion that the Debtor can and will proceed in Loss Mitigation in good faith; **and**
- c. The Debtor shall attach a copy of the completed [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) as an exhibit to Debtor's response. The [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) shall not be separately filed and served at this juncture because the court will treat the Debtor's request for Loss Mitigation as an application for permission to file the [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#). The Debtor's request and any opposition by the Creditor will be considered by the court at the hearing on the Motion for Relief from Stay.

A request for Loss Mitigation is not, in itself, a defense to a Motion for Relief from Stay. Therefore, the Debtor must still advance any legal defenses to the Motion for Relief from Stay in Debtor's response.

In the event the court grants the Debtor leave to file a request for Loss Mitigation, the Debtor shall file the [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) within three (3) business days after the hearing on the Motion for Relief from Stay, and shall serve the [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#) in accordance with subsection (A)(1). The court will treat the Debtor's request for Loss Mitigation as if it had been made pursuant to subsection (A)(1), and will proceed on the request pursuant to these Procedures as if the request had been so made.

3. When a Motion for Relief from Stay has been Granted as to the Property

If a Motion for Relief from Stay has been granted as to the Property, the Debtor may file a completed Loss Mitigation Request by Debtor(s) and Certificate of Service to enter into the Loss Mitigation Program with a Creditor. However, the court will not consider entry of a Loss Mitigation Order without the affirmative consent of the Creditor. If evidence of such consent is not filed within 14 days of the filing of the Loss Mitigation Request by Debtor(s) and Certificate of Service, the request shall be denied.

B. BY WRITTEN REQUEST OF A CREDITOR

1. Generally

Except as provided in subsection (B)(2), a Creditor may file a completed [Loss Mitigation Request by Creditor and Certificate of Service](#) to enter into the Loss Mitigation Program with the Debtor at any time during the pendency of the case. The Creditor shall serve the [Loss Mitigation Request by Creditor and Certificate of Service](#) on the trustee and Debtor's counsel by notice of electronic filing (NEF) via the CM/ECF system and on the Debtor by first class mail.

The Debtor shall have 14 days to file and serve an [Objection to Loss Mitigation Request](#) and a [Notice of Hearing on Objection to Loss Mitigation Request and Certificate of Service](#) on 14 days' notice to the Creditor and case trustee. If an [Objection to Loss Mitigation Request](#) and a [Notice of Hearing on Objection to Loss Mitigation Request and Certificate of Service](#) are not filed, the court may enter a [Loss Mitigation Order](#)