

# **LOSS MITIGATION PROGRAM PROCEDURES**

## **UNITED STATES BANKRUPTCY COURT NORTHERN DISTRICT OF NEW YORK**



### **LOSS MITIGATION PROGRAM PROCEDURES**

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# **LOSS MITIGATION PROGRAM PROCEDURES**<sup>1</sup>

Current as of March 15, 2016

## **I. PURPOSE**

The Loss Mitigation Program<sup>2</sup> is designed to function as a forum in individual bankruptcy cases for debtors and lenders to reach consensual resolution whenever a debtor's principal residence is at risk of foreclosure. The Loss Mitigation Program aims to facilitate resolution by opening the lines of communication between debtors and lenders' decision-makers. While the Loss Mitigation Program stays certain bankruptcy deadlines that might interfere with negotiations or increase costs to the parties, the Loss Mitigation Program also encourages the parties to finalize any Settlement (as defined below) 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 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 resolution will vary in each case according to the particular needs, interests, and goals of the parties.

## **III. OTHER DEFINITIONS**

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, in the Northern District of New York.

### **B. PROPERTY**

The term "Property" means any real property, including condominiums or cooperative apartments, used as the Debtor's principal residence, in which the Debtor holds an interest.

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<sup>1</sup>Text appearing in [Blue](#) denotes a Loss Mitigation Program Form. The Loss Mitigation Program Forms, which are listed in section XII, are required under these Loss Mitigation Program Procedures and are available on the court's website at [www.nynb.uscourts.gov](http://www.nynb.uscourts.gov).

<sup>2</sup>The Loss Mitigation Program Procedures were adopted by Administrative Order #13-05 and modified by Administrative Order #16-01.

### **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 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 lien on the Property; or (4) has been “pooled,” “securitized,” or assigned to a servicer or trustee.

### **D. CREDITOR**

The term “Creditor” means any holder, mortgage servicer, or trustee of an eligible Loan.

### **E. LOSS MITIGATION PARTY**

The term “Loss Mitigation Party” means any party participating in the Loss Mitigation Program as named in the [Loss Mitigation Order](#). In a chapter 12 or 13 case, the standing trustee, although a participant in the Loss Mitigation Program, is not a Loss Mitigation Party.

### **F. STATUS CONFERENCE**

The term “Status Conference” means the conference set by the court which requires appearances by the Loss Mitigation Parties.

## **IV. ADDITIONAL PARTIES**

### **A. OTHER CREDITORS**

Any Loss Mitigation Party may request or the court may direct, after notice and a hearing, more than one Creditor to participate in the Loss Mitigation Program if it may be of assistance to obtain a global resolution.

### **B. NON-FILING CO-DEBTORS AND THIRD PARTIES**

Any Loss Mitigation Party may request or the court may direct, after notice and a hearing, a non-filing co-debtor or other third party to participate in the Loss Mitigation Program if the participation of such party may be of assistance and if the court has jurisdiction over the party or the party consents.

## **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. A request for Loss Mitigation may be made at any time during the pendency of the case except when 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 made only as provided in subsections (A)(2), (A)(3) and (B)(2).

### **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.

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

The Creditor may serve and file a [Loss Mitigation Request by Creditor and Certificate of Service](#) as a reply to any opposition received to a Motion for Relief from Stay that was filed by the Creditor in the manner provided below:

- a. The [Loss Mitigation Request by Creditor and Certificate of Service](#) shall be filed not later than three (3) days prior to the return date of the Motion for Relief from Stay, and shall be served in accordance with subsection (B)(1); **and**

b. The Creditor shall adjourn the hearing on its Motion for Relief from Stay pursuant to Local Bankruptcy Rule (“L.B.R.”) 9013-1(i) and (j) to a date that is at least 20 but no more than 60 days from the date of the hearing on its Motion for Relief from Stay.

The court will treat the Creditor’s request for Loss Mitigation as if it had been made pursuant to subsection (B)(1), and will proceed on the request pursuant to these Procedures as if the request had been so made.

### **C. HEARING ON AN OPPOSED REQUEST FOR LOSS MITIGATION**

If a party files an [Objection to Loss Mitigation Request](#) and a [Notice of Hearing on Objection to Loss Mitigation Request and Certificate of Service](#), the court shall hold a hearing on the request for Loss Mitigation, and shall not enter a [Loss Mitigation Order](#) until the parties have had an opportunity to be heard. In a chapter 12 or 13 case, the standing trustee may attend and participate in the hearing without making a request to appear.

### **D. SERVICE OF THE ORDER ON THE REQUEST FOR LOSS MITIGATION**

Within three (3) business days after entry of a [Loss Mitigation Order](#) or an order denying a request for Loss Mitigation, the party that requested Loss Mitigation shall serve the order on (i) all parties named in the request for Loss Mitigation, (ii) the case trustee, and (iii) any party not named in the request for Loss Mitigation but designated a Loss Mitigation Party in the [Loss Mitigation Order](#), and shall file a certificate of service.

## **VI. LOSS MITIGATION ORDER**

### **A. DEADLINES**

A [Loss Mitigation Order](#) shall contain:

1. The date by which contact persons and telephone, facsimile and email contact information shall be provided by the Loss Mitigation Parties.
2. The date by which the Debtor and the Creditor shall transmit any request for information or documents to other Loss Mitigation Parties, and shall file the appropriate [Loss Mitigation Affidavit \(Debtor\(s\) / Creditor\)](#) itemizing the information and/or documents requested.
3. The date by which the Debtor and the Creditor shall respond to any request for information or documents, and shall file the appropriate [Loss Mitigation Affidavit \(Debtor\(s\) / Creditor\)](#) itemizing the information and/or documents provided.

4. The date by which the initial Loss Mitigation session shall be conducted.
5. The date and time of the initial Status Conference with the court and a requirement that the Loss Mitigation Party that requested Loss Mitigation file with the court a [Loss Mitigation Status Report](#) not later than seven (7) days prior to the initial Status Conference. Failure to file the initial [Loss Mitigation Status Report](#) may, at the discretion of the court, result in termination of Loss Mitigation.

## **B. EFFECT**

During Loss Mitigation:

1. Absent consent of counsel or as otherwise ordered by the court, it is expected that communications between the Loss Mitigation Parties shall be made through the Loss Mitigation Parties' designated attorneys.
2. A Creditor may not file a Motion for Relief from Stay regarding Property that is subject to Loss Mitigation. A pending Motion for Relief from Stay by a Creditor that is a Loss Mitigation Party filed before the entry of the [Loss Mitigation Order](#) shall be adjourned by the Creditor to the date of the initial Status Conference by filing an [Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay and/or Confirmation Hearings \(Albany & Syracuse Divisions\)](#) form, or [Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay, Confirmation Hearings, and/or Motions to Dismiss \(Utica Division\)](#) form, and the stay shall be extended pursuant to 11 U.S.C. § 362(e).

A Loss Mitigation Party that wishes to file a Motion for Relief from Stay or to restore a pending Motion for Relief from Stay to the court's calendar must first make a motion requesting termination of Loss Mitigation pursuant to section IX(B)(4) of these Procedures. A Loss Mitigation Party that wishes to restore a pending Motion for Relief from Stay to the court's calendar may request that relief as ancillary to its motion requesting termination of Loss Mitigation.

3. In the Albany Division only, if a chapter 13 plan is confirmed while Loss Mitigation is pending, an [Addendum to Confirmation Order When Loss Mitigation is Pending](#) will be submitted to the court by the standing trustee as part of the proposed Order of Confirmation.

4. Federal Rule of Evidence 408 shall apply to communications, information, and documents exchanged by the Loss Mitigation Parties in connection with the Loss Mitigation Program.

5. Unless otherwise ordered by the court, in a chapter 7 case, entry of a Loss Mitigation Order defers entry of an order discharging the Debtor until one day after an [Order Terminating Loss Mitigation and Final Report](#) is entered, pursuant to Federal Rule of Bankruptcy Procedure 4004(c)(2). The deadline to object to the Debtor's discharge or the dischargeability of a debt is not extended by the entry of a [Loss Mitigation Order](#).

## **VII. DUTIES UPON COMMENCEMENT OF LOSS MITIGATION**

### **A. GOOD FAITH**

#### **1. Participation**

The Loss Mitigation Parties shall negotiate in good faith. A party that does not participate in the Loss Mitigation Program in good faith may be subject to sanctions.

#### **2. Mortgage Payments**

During the pendency of Loss Mitigation, a Debtor in a chapter 13 proceeding shall make the contractually due post-petition monthly payment ("Payment") directly to the Creditor, or submit the Payment or such lesser amount as the Debtor can afford to the standing trustee for the benefit of the Creditor.

#### **3. Plan Payments**

In a chapter 12 or 13 proceeding, the Debtor's failure to remain current with plan payments may, at the discretion of the court, result in termination of Loss Mitigation.

### **B. ADJOURN OTHER PROCEEDINGS**

Other proceedings (*e.g.* motions or applications) that are currently pending between the Loss Mitigation Parties shall be adjourned by the party who commenced such proceeding pursuant to L.B.R. 9013-1(i) and (j) to the date of the initial Status Conference as indicated in the [Loss Mitigation Order](#) to the extent that those proceedings concern (1) objection to the allowance of a proof of claim; (2) reduction, reclassification or avoidance of a lien; or (3)

valuation of a lien or the Property. A pending Motion for Relief from Stay by a Creditor shall be adjourned as provide in section VI(B)(2) of these Procedures.

## **C. CONTACT INFORMATION**

### **1. The Debtor**

If the Debtor is represented by counsel in the underlying bankruptcy case, the Debtor shall be represented during all phases of the Loss Mitigation Program. Debtor's counsel shall provide the name, address, direct telephone number, facsimile number and email of the attorney(s) with authority to act on the Debtor's behalf to each Loss Mitigation Party. If the Debtor is *pro se*, the Debtor shall provide written notice to each Loss Mitigation Party of the manner in which the Creditor shall contact the Debtor. This may be done in the [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#).

### **2. The Creditor**

The Creditor shall provide written notice to the Debtor's attorney or the Debtor, if *pro se*, of the names, addresses, direct telephone numbers, facsimile numbers and email addresses of the attorney(s) representing the Creditor in Loss Mitigation and the person in-house who has full settlement authority to act on the Creditor's behalf with respect to the Loan. This may be done in the [Loss Mitigation Request by Creditor and Certificate of Service](#) or [Loss Mitigation Affidavit of Creditor and Certificate of Service](#).

## **D. STATUS REPORT**

Unless the court orders otherwise in the [Loss Mitigation Order](#), the party that requested Loss Mitigation shall file and serve upon all other Loss Mitigation Parties and, in a chapter 12 or 13 case, the standing trustee, a [Loss Mitigation Status Report](#) as provided in section VIII(C)(2) of these Procedures. The date on which the [Loss Mitigation Status Report](#) is due shall be governed by the [Loss Mitigation Order](#).

## **E. SUBMISSION OF ORDER TERMINATING LOSS MITIGATION AND FINAL REPORT UPON RESOLUTION OF LOSS MITIGATION**

Upon completion of Loss Mitigation, whether by agreement or resolution reached by the Loss Mitigation Parties ("Settlement"), dismissal of the case, or otherwise, an [Order Terminating Loss Mitigation and Final Report](#) shall be filed by the party that requested Loss Mitigation, unless the court directs otherwise.

## **VIII. LOSS MITIGATION PROCESS AFTER LOSS MITIGATION IS ORDERED**

### **A. INITIAL CONTACT PERIOD**

The purpose of the initial contact period is to create a framework for the Loss Mitigation sessions and to ensure that the Loss Mitigation Parties are prepared. The initial contact period is not intended to limit the issues or proposals that may arise during the Loss Mitigation sessions. During the initial contact phase, the Loss Mitigation Parties should hold a telephone conference to discuss (1) the types of Loss Mitigation solutions under consideration by each party; and (2) a plan for the exchange of required information prior to the Loss Mitigation session.

1. Within seven (7) days after the entry of the [Loss Mitigation Order](#), the following shall occur:
  - a. Each Loss Mitigation Party shall designate contact persons and disclose contact information, unless this information was previously provided.
  - b. The Creditor shall contact the Debtor's attorney or the Debtor, if *pro se*.
  - c. Each Loss Mitigation Party shall make its request for information and documents, if any, and file the appropriate [Loss Mitigation Affidavit \(Debtor\(s\) / Creditor\)](#) itemizing the information and/or documents requested.
2. Within thirty-five (35) days after entry of the [Loss Mitigation Order](#) and at least seven (7) days prior to the initial Loss Mitigation session, each Loss Mitigation Party shall respond to any request for information and documents, and shall file the appropriate [Loss Mitigation Affidavit \(Debtor\(s\) / Creditor\)](#) identifying the information and/or documents provided.
3. Within forty-five (45) days after entry of the [Loss Mitigation Order](#) but in any event prior to the initial Status Conference, the Loss Mitigation Parties shall conduct the initial Loss Mitigation session. The initial Loss Mitigation session shall include a discussion of both the federally regulated and in-house loan modification programs for which the Loan of the Debtor may qualify.

### **B. LOSS MITIGATION SESSIONS**

Loss Mitigation sessions may be conducted in person, by telephone, or by video conference. At the conclusion of each Loss Mitigation session, the Loss Mitigation Parties

shall discuss whether and when to hold a further session and whether any additional information or documents should be exchanged.

## **C. STATUS CONFERENCE / ADDITIONAL CONFERENCES**

### **1. Status Conference**

Pursuant to the [Loss Mitigation Order](#), the court shall conduct an initial Status Conference at which the Loss Mitigation Parties shall appear. The Loss Mitigation Parties shall appear through counsel unless unrepresented, in which case, the party shall appear. In its discretion, the court may order that the Loss Mitigation Parties appear with their counsel at such intervals as directed by the court. In a chapter 12 or 13 case, the standing trustee may attend and participate in the Status Conference without making a request to appear.

**a. Procedure for Requesting Adjournment.** An adjournment request shall be made by not later than 2:00 p.m. the day prior to the Status Conference by filing an [Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay and/or Confirmation Hearings \(Albany & Syracuse Divisions\)](#) form, or [Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay, Confirmation Hearings, and/or Motions to Dismiss \(Utica Division\)](#) form.

### **2. Loss Mitigation Status Report**

Seven (7) days prior to the initial Status Conference or any adjournments thereof by the court, the party that requested Loss Mitigation shall file and serve upon all Loss Mitigation Parties and, in a chapter 12 or 13 case, the standing trustee, a [Loss Mitigation Status Report](#). After the filing of the initial [Loss Mitigation Status Report](#), the format, responsible party, and due date of any subsequent status reports, shall be as directed by the court.

### **3. Additional Conferences**

At any time during Loss Mitigation, a Loss Mitigation Party may request additional conferences with the court by filing a [Request for Additional Loss Mitigation Conference and Certificate of Service](#) on notice to the other Loss Mitigation Parties and, in a chapter 12 or 13 case, the standing trustee.

## **D. PERSONS WITH SETTLEMENT AUTHORITY**

At both a Loss Mitigation session and a Status Conference with the court, each Loss Mitigation Party shall have a person with full settlement authority present or immediately available by telephone. If a Loss Mitigation Party is appearing at a Status Conference by telephone or video conference, that party shall be available beginning thirty minutes before the conference.

## **IX. DURATION AND TERMINATION**

### **A. DURATION**

Once a [Loss Mitigation Order](#) has been entered by the court, it shall remain in effect until an order is entered terminating Loss Mitigation or dismissing the Debtor's case.

### **B. TERMINATION**

#### **1. By the Court**

The court may *sua sponte* terminate Loss Mitigation at any time for failure to comply with these Procedures.

#### **2. By Debtor**

The Debtor may terminate Loss Mitigation prior to a Settlement by filing a letter with the court on notice to all Loss Mitigation Parties and, in a chapter 12 or 13 case, the standing trustee, stating the reason for the termination. Once the letter is filed, the Debtor shall present an [Order Terminating Loss Mitigation and Final Report](#) to the court by uploading the document via the court's E-Order system.

#### **3. By Agreement**

The Loss Mitigation Parties may agree to termination of Loss Mitigation prior to a Settlement by filing a [Stipulation Terminating Loss Mitigation](#) signed by the Loss Mitigation Parties.<sup>3</sup> Concurrently, the party that requested Loss Mitigation shall upload an [Order Terminating Loss Mitigation and Final Report](#) via the court's E-Order system.

#### **4. By Creditor in the Absence of Agreement**

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<sup>3</sup> The parties are reminded to comply with L.B.R. 9011-3(g).

The Creditor may request termination of Loss Mitigation in the absence of agreement by filing and serving a motion requesting termination on the other Loss Mitigation Parties and, in a chapter 12 or 13 case, the standing trustee. The motion shall set forth the reason for the request and that no agreement can be reached. A certificate of service shall be filed not later than seven (7) days prior to the return date of the motion.

In determining whether to grant termination of Loss Mitigation, the court shall consider whether: (1) termination of Loss Mitigation is appropriate; (2) the Loss Mitigation Party seeking termination has participated in good faith and has complied with these Procedures; and (3) the Loss Mitigation Party opposed to the termination will be prejudiced.

## **5. By Dismissal of the Bankruptcy Case**

If the Debtor's case is dismissed during Loss Mitigation, Loss Mitigation shall terminate on the date the dismissal order is entered. If the dismissal is the result of a chapter 12 or chapter 13 debtor requesting voluntary dismissal of the bankruptcy case pursuant to 11 U.S.C. §§ 1208(b) or 1307(a), respectively, the Debtor shall indicate in the request for dismissal whether the Debtor agreed to or intends to enter into a Settlement with a Loss Mitigation Party.

## **X. SETTLEMENT**

The court shall consider any Settlement reached during Loss Mitigation and may authorize the Settlement, subject to the following provisions.

### **A. IMPLEMENTATION**

If the Settlement consists of a loan modification, a [Stipulation and Order Authorizing Parties to Enter Into Loan Modification and Directing Treatment of Mortgage Claim](#)<sup>4</sup> shall be executed and presented to the court by uploading the document via the court's E-Order system. Approval of all other Settlements shall be sought by motion on notice as required under the Bankruptcy Code and Bankruptcy Rules.

### **B. FEES, COSTS, OR CHARGES**

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<sup>4</sup> See *supra* note 3.

If a Settlement provides for a Creditor to receive payment or reimbursement of any expense arising from the Creditor's participation in the Loss Mitigation Program, that expense shall be disclosed to the Debtor and the court before the Settlement is approved.

### **C. SIGNATURES**

Consent to the Settlement shall be acknowledged in writing by the Creditor's attorney who participated in the Loss Mitigation, the Debtor, Debtor's counsel, if applicable, and, in a chapter 12 or 13 case, the standing trustee.

### **D. HEARING**

Where a Debtor is represented by an attorney, a Settlement may be authorized by the court without further notice, or upon such notice as the 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, the Creditor shall file a motion to approve the Settlement. The Settlement shall not be authorized until the court conducts a hearing at which the *pro se* Debtor shall appear in person. In a chapter 12 or 13 case, the standing trustee may attend and participate in the hearing without making a request to appear.

### **E. DISMISSAL NOT REQUIRED**

A Debtor shall not be required to request dismissal of the bankruptcy case in order to effectuate a Settlement.

## **XI. DEBTOR'S COUNSEL FEES WHEN UTILIZING LOSS MITIGATION PROGRAM**

### **A. ALLOWANCE AND PAYMENT OF PORTION OF FEE BEFORE CONFIRMATION OF CHAPTER 13 PLAN**

The [Loss Mitigation Order](#) shall provide that in a chapter 13 case where Debtor's counsel is to receive a portion of fees through the plan, in the month following entry of the [Loss Mitigation Order](#) or the first month after the initial 11 U.S.C. § 341 Meeting of Creditors, whichever is later, the chapter 13 trustee shall disburse payment to Debtor's counsel of the requested attorney fee—up to a maximum of \$1,500.00—with said amount to be paid in the manner prescribed in the Debtor's proposed plan. The amount disbursed shall be deemed allowed immediately. This amount shall be exclusive of any amounts received by counsel prior to the filing of the petition. The balance of the attorney fee shall only be allowed and paid pursuant to a Confirmation Order or further order of the court.

## **B. ALLOWANCE AND PAYMENT OF ADDITIONAL FEE FOR LOSS MITIGATION UPON CONCLUSION OF LOSS MITIGATION PROGRAM**

If Debtor's counsel seeks fees in an amount of \$1,000 or less, the fees sought may be presumed reasonable for services rendered in connection with the Loss Mitigation Program without further documentation. After submitting an [Order Terminating Loss Mitigation and Final Report](#), Debtor's counsel may file an [Ex Parte Application and Certification in Support of Approval and Payment of Attorney Fees for Loss Mitigation](#). Concurrently therewith, Debtor's counsel shall upload via the court's E-Order system a proposed [Order Approving Attorney Fees for Loss Mitigation and Authorizing Payment \(chapter 7 or 11 / chapter 12 or 13\)](#). The court may thereafter enter the proposed order and, in a chapter 12 or 13 case, may direct the standing trustee to pay approved fees as an administrative expense through the Debtor's plan.

Counsel seeking approval of fees in excess of \$1,000.00 shall file and serve a Notice of Hearing and an Application for Compensation under 11 U.S.C. §§ 330 and 331. Any such Application for Compensation shall be accompanied by an appropriate narrative of services rendered and contemporaneous time records.

## **XII. LOSS MITIGATION PROGRAM REQUIRED FORMS**

The following forms are available on the court's website and shall be used, as indicated above, by the Loss Mitigation Parties:

- [Loss Mitigation Request by Debtor\(s\) and Certificate of Service](#)
- [Loss Mitigation Request by Creditor and Certificate of Service](#)
- [Objection to Loss Mitigation Request](#)
- [Notice of Hearing on Objection to Loss Mitigation Request and Certificate of Service](#)
- [Loss Mitigation Order](#)
- [Loss Mitigation Affidavit of Debtor\(s\) and Certificate of Service](#)
- [Loss Mitigation Affidavit of Creditor and Certificate of Service](#)
- [Loss Mitigation Status Report](#)
- [Request for Additional Loss Mitigation Conference and Certificate of Service](#)

- Stipulation and Order Authorizing Parties to Enter Into Loan Modification and Directing Treatment of Mortgage Claim
- Stipulation Terminating Loss Mitigation
- Order Terminating Loss Mitigation and Final Report
- Ex Parte Application and Certification in Support of Approval and Payment of Attorney Fees for Loss Mitigation
- Order Approving Attorney Fees for Loss Mitigation and Authorizing Payment – chapter 7 or 11
- Order Approving Attorney Fees for Loss Mitigation and Authorizing Payment – chapter 12 or 13
- Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay and/or Confirmation Hearings (Albany & Syracuse Divisions)
- Adjournment Request/Withdrawal/Settlement Notification of Loss Mitigation Status Conferences; Related Motions for Relief from Stay, Confirmation Hearings, and/or Motions to Dismiss (Utica Division)
- Addendum to Confirmation Order When Loss Mitigation is Pending

CM/ECF Filing Instructions for each prescribed form are available on the court's website. Please visit the link entitled "[Loss Mitigation Filing Event Codes in CM/ECF.](#)"