

U.S. Bankruptcy Court for the District of R.I. Adopts Loss Mitigation Program and Procedures

October 2009

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On October 22, 2009, the Bankruptcy Court for the District of Rhode Island issued a General Order announcing the adoption of a court-supervised loss mitigation program (the “Program”) that will go into effect on November 1, 2009. The Program is patterned closely on a similar program utilized by the United States Bankruptcy Court for the Southern District of New York. The Program places specific burdens and time frames on creditors.

The aim of the Program is for debtors and creditors to reach a consensual loss mitigation resolution when a debtor’s principal residence is at risk of foreclosure. The Program is available to debtors who file cases under Chapter 7, 11, 12 or 13 of the Bankruptcy Code. All negotiations must be done in good faith or the Court may impose sanctions. The Program may be requested at any time by any party during the pendency of the bankruptcy, but, it is important to note that a debtor may specifically request loss mitigation in the Chapter 13 Plan. If the debtor requests loss mitigation in the Chapter 13 Plan, the debtor shall serve a Notice/Request for Loss Mitigation on the creditor within 7 days of filing the Chapter 13 Plan. The creditor then has 14 days to object. If no objection is filed, the Court will enter a Loss Mitigation Order that must be followed. The Program also permits a debtor to object to a motion for relief from the automatic stay by filing a Notice/Request for Loss Mitigation. If a party objects to the Notice/Request for Loss Mitigation, the Court will hold a hearing. The objecting party must file a statement at least 2 days before the hearing citing specific reasons why it believes loss mitigation would not be successful. Sworn testimony may be required.

The Loss Mitigation Order will contain deadlines for the exchange of information between the parties. The creditor must provide the name and contact information for a specific person with settlement authority. The creditor must contact the debtor’s attorney within 7 days of the entry of the Loss Mitigation Order. The debtor must complete the

creditor's loss mitigation paperwork at least 7 days prior to a loss mitigation session. Loss mitigation sessions may be conducted in person, telephonically or via video conference. If the Court is involved in a loss mitigation session, the parties in attendance must have full settlement authority and be available 30 minutes prior to the start of the session.

Motions for relief from the automatic stay should not be filed if a Loss Mitigation Order is pending and any hearing on same will likely be continued to a date after the conclusion of the loss mitigation period. Confirmation hearings will be continued to a date after the loss mitigation period has expired. A creditor has an additional 14 days to object to confirmation following the conclusion of the loss mitigation period. It is also important to note that no information exchanged during the loss mitigation period is admissible in any subsequent proceeding. A party may request that the loss mitigation period be terminated and must state the reasons why termination is appropriate. A hearing will likely be scheduled by the Court on any request for termination.

If the parties are able to reach an agreement, the agreement must be approved by the Court. Please note that a creditor may not require the debtor to dismiss his/her pending bankruptcy case as a condition of any loss mitigation agreement. Also, if a bankruptcy case is dismissed during the loss mitigation period, the docket report shall cite that loss mitigation efforts were ongoing at the time of the dismissal.