

OVERVIEW OF LOSS MITIGATION/MORTGAGE MODIFICATION

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The present Loss Mitigation/Mortgage Modification process used in South Carolina is an efficient, manageable, and impartial process that does not delay confirmation of the plan in a Chapter 13 bankruptcy case. The process also allows for loan modifications in a Chapter 7 bankruptcy case, since the loan modification indicates the intention of the debtor to the creditor.

Our firm has been able to successfully implement the Loss Mitigation/Mortgage Modification procedure and obtain confirmable Chapter 13 plans.¹ This procedure allows a person of fixed or limited means to retain his dwelling, possibly at a reduced payment and interest, while having a manageable Chapter 13 plan payment. This benefits all creditors, not just the mortgage creditors, by giving the debtor an opportunity to keep their residence and grow equity, while also allowing them to pay a dividend to their creditors when they might not otherwise be able to do so.

I. Benefits of Loss Mitigation/Mediation Procedures and its Relation to Chapter 13 Plan and Process

Loss mitigation is any act or agreement between the lender and borrower intended to resolve a default other than through an adverse foreclosure by the lender. The most common types of loss mitigation include: deed-in-lieu of foreclosure, short sale, forbearance, and loan modification.

In the majority of Chapter 13 cases, debtors are seeking to keep their homes. The Loss Mitigation/Mortgage Modification program is designed to help debtors who cannot afford their mortgages or who fall behind, and need a more manageable payment option than the traditional cure and maintain option. Loss mitigation during a debtor's bankruptcy case can provide an opportunity for the restructuring of the home mortgage.

Applying for a loan modification inside of a bankruptcy gives the loan modification process more structure and other benefits. The bankruptcy can alleviate the concerns of the lender about other outstanding debts, such as credit cards and medical bills. Additionally, if there are issues with an underwater second mortgage or an arrearage on homeowner's association dues that may prevent a loan modification of the first mortgage, a bankruptcy provides different alternatives for resolving these issues, such as stripping the obligation off the property or curing a default.

¹ www.Mossattorneys.com – (Additional forms, examples, and resources can be found in addition to the material provided)

Even after a debtor files bankruptcy, he/she may face the situation where an adjustable rate mortgage payment resets and the change in monthly payments becomes more than he/she can pay. In many cases, the traditional Chapter 13 plan offering repayment of pre-petition arrearage over 3-5 years no longer provides the long term relief that will allow a debtor to achieve the much needed “fresh start.”

Benefits of Loss Mitigation/Mediation Procedures include:

- Good Faith from all parties per Court Order
- Streamlined Communications
- Borrower directly connected to servicer
- No lost documentation
- Real time communications
- All parties can send communications and documents
- Transparency
- History of every action tracked and viewable by all parties
- All stakeholders see the same exact information
- Objective record of all transactions
- Access to all documents submitted (in digital format)
- Cost Savings
- Increased efficiencies
- Faster resolutions
- Lower mailing / overnight package costs
- Lower FTE costs
- Additional no look fee

II. When to Consider Loss Mitigation/Mortgage Modification

A. Initial Client Consultation

When first meeting with a potential client, loss mitigation is a great option to keep in mind. When addressing real property owned by the potential client, there are several questions you can ask to ascertain whether or not loss mitigation/modification could benefit your client. Mortgage companies are willing to help debtors remain in their home if the debtor is able to make reasonable monthly payments.

The following questions are important for different reasons, but all can be used in helping you make the determination of whether or not this client would be a good candidate for the loss mitigation/modification process:

1. Who is your mortgage company/investor of the loan?
2. What is your monthly mortgage payment?

3. What type of income do you have coming into your household?
4. Are you current on the monthly mortgage payments? If behind, when did you make your last payment?

1. Who is your mortgage company?

This is important because certain mortgage companies fall under the federal HAMP program. A complete list of participants can be found at the following link:

<http://www.makinghomeaffordable.gov/get-started/contact-mortgage/Pages/default.aspx>

* Government Sponsored Enterprises: participate in some MHA programs in addition to their own foreclosure prevention programs.

The Federal Housing Administration (FHA)

U.S. Department of Agriculture (USDA)

Government Sponsored Enterprises (Fannie Mae and Freddie Mac)

- YES HAMP (per own guidelines);
- YES HAFA (home affordable foreclosure alternative);
- Traditional Modifications;
- Standard Modifications;
- Streamline Modifications;
- NO PRINCIPAL FORGIVENESS
- NO Unemployment Program/ Possible Forbearance;
- Typically market interest rate for up to 480months;
- Use look up tools to verify if loan is owed by Fannie or Freddie;
- When a mortgage has a MTMLTV ratio that is less than 80%, the steps for determining modification terms differs;
- Effective APRIL 1, 2014, Servicers must calculate the principal and interest payment using a 480 month amortization term in addition to a 360-month amortization term.

If the mortgage company is not listed as a participant, your client may still be eligible for a loan modification; however, they might not be subject to HAMP modifications. Many, if not all, mortgage companies offer loan modifications in some capacity to those able to afford monthly mortgage payments. These mortgage companies require many of the same documents required by HAMP (taxes, pay stubs, bank statements, etc.).

2. *What is your monthly mortgage payment?*

Even if your client is not behind in mortgage payments, loss mitigation/modifications may still benefit your client if the mortgage payment is higher than 31% of the debtor's gross income and you believe the debtor will have trouble making chapter 13 plan payments and maintain their post-petition mortgage payments.

Through loan modification, the mortgage company can use several equations to lower mortgage payments in order to help your client remain in the home. HAMP modifications have two tiers. HAMP tier 1 is for debtors who are currently making mortgage payments about 31% of their gross income. If the debtor is making payments under 31% of their gross income, participating mortgage companies will then begin to apply the waterfall calculations. Some mortgage companies offer loan modifications for significantly less than 31% of the debtor's gross income. Depending on the mortgage company, the DTI ratio can range between 10% to 55%.

3. *Are you behind on your monthly mortgage payments? If so, when did you last make a payment?*

Loss mitigation and loan modifications are extremely beneficial if the potential client is so far behind on their home, that they will not be able to treat the arrears in the chapter 13 plan and afford their monthly mortgage payment. Loan modifications generally absorb arrears and affectively make the client current in monthly mortgage payments. Therefore, the debtor can treat all other debt through the bankruptcy while curing mortgage arrears through a successful loan modification.

III. What language should you include in the chapter 13 plan if your client is attempting loss mitigation/modification? (both options require arrearage to be treated outside the Chapter 13 plan)

A. Option One- Judge Waites' Guidelines

This option should be used when you believe your client can make the regular contract payments or adequate protection payments and monthly chapter 13 plan payments.

B. Option Two- Judge Waites' Guidelines

This option should be used when your client is significantly behind in mortgage payments. Option two is for clients who will only be able to remain in their home if a loan modification is offered and accepted.

IV. Initiating a Loan Modification during an active Chapter 13

A. Loan modification before § 362 motion is filed:

If a debtor falls behind in post-petition mortgage payments a loan modification may operate to resolve a § 362 motion for relief from stay. Whether a mortgage creditor has filed for relief or the debtor simply knows that they have fallen behind a successful loan modification will often address the debtor's arrears and therefore resolve the motion.

The procedure for applying for a loan modification during a case is similar to the procedure taken at the beginning of a case without the deadline to file the Notice and Motion for Loss Mitigation/Mortgage Modification.

B. Loan modification after § 362 motion is filed:

It is preferable that the loan modification process is undertaken as soon as the debtor falls behind in post-petition payments however, an attempted loan modification may also act in lieu of a settlement order. After a §362 motion has been filed and the debtor has expressed doubt in their ability to make payments in a settlement order, an alternative route to resolving the § 362 motion may be to agree with mortgagor's counsel that a loan modification will be attempted. If the mortgagor's counsel agrees, a settlement order may be signed and filed that states that the parties will attempt to cure post-petition payments through modification rather than settlement order payments. This proposed order will lay out a timeline for filing the required motion, registering with the portal, collection of documents, use of the portal, and decision from the mortgage company. In some instances, a Rubin Order² may be entered to table the motion for relief until a decision has been made about the modification.

V. After a successful loan modification:

If a loan is successfully modified during a bankruptcy, it is important to analyze whether the plan and schedules need to be amended. If the original plan called for the cure of prepetition arrears through payments made to the mortgagor by the trustee, an amended plan should be filed to remove the mortgagor as a creditor receiving distributions through the plan. This change will often result in a larger percent being paid to unsecured creditors; however, it is best practice to re-examine the debtors schedule I and schedule J and amend those schedules if the debtor's income or expenses have changed.

² A Rubin Order takes an item off the active docket while something else occurs. The court will generally require that the motion (or whatever else is actively pending) be restored to the active docket by motion within 90 to 120 days or it will be dismissed.

WHAT IS THE MAKING HOME AFFORDABLE PROGRAM, AND WHAT IS HAMP?

The Making Home Affordable Program is a critical part of the government's effort to stabilize the housing market and help struggling homeowners get relief and avoid foreclosure. By providing mortgage loan servicers with financial incentives to modify existing first lien mortgages, the Treasury hopes to help homeowners avoid foreclosure regardless of who owns or guarantees the mortgage. The Making Home Affordable Program includes the following programs:

- Home Affordable Refinance Program (HARP)
- Home Affordable Modification Program (HAMP)
 - Principal Reduction Alternative (PRA)
 - Home Affordable Unemployment Program (UP)
- Second Lien Modification Program (2MP)
- Home Affordable Foreclosure Alternatives (HAFA)
- Options for government-insured mortgages: FHA-HAMP, VA-HAMP, USDA-HAMP³

HAMP helps homeowners who are struggling to keep their loans current or who are already behind on their mortgage payments. HAMP is designed to assist debtors who have experienced financial hardship as the result of unaffordable increases in expenses or reductions in income by reducing their monthly payment to an affordable level.

DOES THE HAMP MODIFICATION AFFECT MY LOAN?

Your mortgage servicer may offer various options to you including, but not limited to:

- Reducing your interest rate to as low as 2 percent;
- Extending the term of your loan up to 40 years;
- Deferring a portion of the principal payment to the end of the loan;
- Forgiving a portion of the principal.

³ For more information about these programs please visit www.makinghomeaffordable.gov

WILL I BE ABLE TO GET A MODIFICATION IF I AM IN A HAMP TRIAL PERIOD PLAN AND SUBSEQUENTLY FILE BANKRUPTCY?

Yes, if you are in a HAMP trial period plan and subsequently file bankruptcy, you may not be denied a HAMP modification on the basis of the bankruptcy filing. The mortgage servicer must work with you or your attorney to obtain any required court and/or trustee approvals. The servicer should extend the trial period plan as necessary to accommodate delays in obtaining court approvals or receiving your trial period payments when they are made to a trustee. However, servicers are not required to extend the trial period beyond two months, resulting in a maximum five-month trial period. If the trial period is extended, you must make a trial period payment for each month of the trial period, including any extension month.

DO I HAVE TO GO THROUGH A TRIAL PERIOD FOR A HAMP MODIFICATION?

Generally, if you are eligible for HAMP, your mortgage servicer will put you on a three-month trial plan to demonstrate your ability to make timely payments at the new monthly payment level. If you successfully make all required payments during the trial period and the income and expense information you provided is determined to be accurate, your servicer will execute an official modification agreement. You will be required to sign the modification agreement and other documents and attest that all of the information you provided to your servicer was true and accurate. Misrepresenting any required information is a violation of Federal law and has serious legal consequences. At the discretion of the mortgage servicer, if you are in an active (open) chapter 13 bankruptcy case and you are determined to be eligible for HAMP, you might not have to complete a trial period plan. For more information about waiver of the trial period, consult with your attorney or, if you do not have an attorney, consult with the bankruptcy trustee.

WHAT HAPPENS IN CHAPTER 13 BANKRUPTCY IF I'M IN A TRIAL PERIOD PLAN UNDER HAMP?

If you are in an active (open) chapter 13 bankruptcy case and, after filing bankruptcy, you made payments as required by a HAMP trial period plan, the mortgage servicer may not do any of the following:

- (1) object to confirmation of your chapter 13 plan,

- (2) move for relief from the automatic bankruptcy stay, or
- (3) move for dismissal of your chapter 13 case on the ground that you paid only the amounts due under the trial period plan.

You may need to file an *Interim Order Granting Approval of Trial Period Plan* (Exhibit L from Chamber Guidelines) and/or a *Mortgage Loan Modification/Loss Mitigation Report* (Exhibit J from Chamber Guidelines).

AM I ELIGIBLE FOR HAMP IF I HAVE RECEIVED A CHAPTER 7 BANKRUPTCY DISCHARGE?

Yes, even if you have received a chapter 7 bankruptcy discharge, you are eligible for HAMP. If you did not reaffirm your mortgage debt, the following language must be inserted in the Home Affordable Modification Agreement:

“I was discharged in a chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”⁴

THE LOAN MODIFICATION PROCESS – STEP BY STEP

The first thing our office does when the debtor meets with an attorney is to provide our Loan Modification packet. We require this to be turned in along with their questionnaire. The application process has been streamlined over the last four years. Most lenders are using the same seven to nine-page application.⁵

1. We’ve implemented a process for paperwork intake to alleviate extra work and duplicate documents from our clients.
2. We explain that the lender considering loan modification may ask for additional information that the bankruptcy case may not necessarily need/require, including the following:

⁴ www.hmpadmin.com

⁵ Attached you will find the main documents for the loan modification. Also found on DocUmods, and the DMM Portal. These documents are; Request for Modification (RMA), Uniform Borrowers Assistance (UBA), 4506-T, Dodd Frank Certification. Hardship Affidavit.

- a. Monthly Mortgage statement (to confirm Unpaid Principle Balance, Loan Number, Interest rate, P&I, and if escrowed)
 - b. Utility Bill (to prove proof of occupancy)
 - c. HOA statement
 - d. Letter(s) of explanation (if applicable)
3. While meeting with client, prepare DocUmods and Portal.
- a. A complete Request for Modification and Affidavit (RMA). This form captures information on your income, expenses, subordinate liens on the property, and liquid assets. It also includes a Hardship Affidavit and fraud notice. A complete Tax Authorization Form (IRS Form 4506T-EZ). This form gives permission for your servicer to request a copy of the most recent tax return you have filed with the IRS.
 - b. Enter information into DocUmods and DMM Portal and it will automatically be saved.
 - c. Pay for DocUmods and print applicable pages. This is the necessary step to complete the borrowers “prepared package”.
 - d. Utilize the Proposed Order to upload the documents to DMM Portal.
 - i. Submission via DMM Portal is made when payment is rendered.
Therefore, the upload is ‘pending’ until payment.
4. Your lender's loan modification employees may not be well-versed in the latest guidelines, so you cannot rely on their knowledge. It is very common for applicants to get different interpretations of the same rules from different employees within the same company.
5. We suggest that you will get better results if you work via DMM Portal with respect and kindness.
6. Communication should be clear and concise. If you have to say it, WRITE IT DOWN, and upload it.
7. Spell out your request as detailed as possible (i.e. Our clients would be able to feasibly afford a monthly payment in the amount X).
8. You may need to reiterate the debtor’s circumstances in order to get what the debtor needs. The lender may not realize that moving forward the payment *may* be affordable, and all you’re doing is looking for a modification to “treat the large sum of arrears.”
9. HAMP guidelines do not include provisions for any appeal process. However, you are allowed to reapply if your circumstances have changed after your denial.

If you believe a denial is in error, refer to the HAMP Non-GSE Handbook.⁶ Hit Control F; and type in a key word, and you will be directed to the sections that cover that topic/issue.

⁶ https://www.hmpadmin.com/portal/programs/docs/hamp_servicer/mhahandbook_44.pdf

The HAMP application is going to ask you for a lot of information, your income information, income about your debts, and income about your assets. Filling out this application truthfully is an extremely important part of this process. You are, in essence, applying for a mortgage again. So you must be open and honest on that application. You can't hide assets. You may be liable for mortgage fraud if you try to get a loan modification without disclosing all requested information.

PERSONAL CHECKLIST FOR HAMP PPW. REQUIRED FOR A LOAN MODIFICATION	N/A	REC'D	BKY FILE	INCOMPLETE
1. Monthly mortgage statement				
2. Information about other mortgages on your home				
3. 30 Days Most Recent Pay Stubs (ALL Contributing to household income)				
4. Homeowner's Insurance Policy Declaration page				
5. Current Utility Bill				
6. Current Property Tax Statement				
7. HOA Statement and/ or Coupon Book				
8. 2014 Taxes (signed and dated)				
9. Monthly Expenses				
10. Lease agreements (most recent). And receipt of payments on leased property.				
11. If self-employed or an independent contractor, the most recent quarterly or year-to-date profit and loss statement with company name and date (or last three months P&L's)				
12. Documentation of income you receive from other sources (alimony, child support, social security, unemployment, disability, pension, etc.) MOST RECENT AWARD LETTER				
13. Unemployment insurance letter, if applicable				
14. 60 days most RECENT bank statements. Should show receipt of payments reflected in documents from #11 (above)				
15. Hardship Letter describing any circumstances that caused your income to be reduced or expenses to be increased (job loss, divorce, illness, etc.)				
15. Form 710 Uniform Borrower Assistance Form				
16. RMA- Request For Mortgage Assistance Form				
17. Tax Form 4506T-EZ or form 4506-T				
18. Dodd-Frank Certification Form				
19. Third-Party Authorization Form				
20. Hardship Affidavit				
** All PAGES of statements, EVEN IF BLANK				
** YOU KEEP ORIGINALS and provide Copy				
** Write loan number ON ALL DOCUMENTS				

1 Alimony, child support or separation maintenance requires legal documentation showing amount, frequency and duration of payments. NOTE: You are NOT required to disclose child support, alimony, or separation maintenance income, unless you want us to consider it as qualifying income. 2 Email updates, information, questions, comments and/or concerns to:

We have the clients fill out the following Income and Expense worksheets (which are similar to schedules I & J) but separates the expenses as if you were inputting into DocUmods.

Income Worksheet

Income	Amount
Monthly GROSS wages, salary, and commissions.	
Estimate Monthly Overtime	
Total NET Monthly Take Home Pay	
Regular Income from Operation of Business	
Income from Real Property	
Interest and Dividends	
Alimony, Maintenance or Support Payments	
Social Security or Government Assistance	
Pension or Retirement Income	
Other Monthly Income	

Please fill in the above expenses sheet as is the most accurate for your current financial situation. Include a 0 or N/A in those areas which do not apply to your situation.

Sign

Loan Number: _____

Print

Date

Expenses	Amount
Mortgage payment (principal & interest only)	
Real estate taxes	
Property Insurance	
Home Maintenance, repair and Upkeep expenses	
HOA Fees	
Additional Mortgage Payments (Home Equity)	
Electricity/Heat	
Natural Gas	
Sewer	
Water, Garbage Collection	
Home Telephone	
Cell Phone (s)	
Internet	
Cable	
Other Utilities (specify)	
Food and Housekeeping Supplies	
Childcare and Children's Education Supplies	
Clothing, Laundry, and Dry Cleaning	
Personal Care products and services	
Medical and Dental Expenses	
Transportation (gas, maintenance, NOT car payment)	
Entertainment, Clubs, Recreation, etc.	
Charitable Contributions and Religious Donations	
Life Insurance	
Health Insurance	
Vehicle Insurance	
Other Insurance (specify)	
Taxes (specify)	
Car Payments for Vehicle 1	
Car Payments for Vehicle 2	
Other Lease Payments (specify)	
Alimony Payments (not deducted from pay)	
Payments to Support others who don't live with you	
Mortgages on other property	
Real estate taxes on other property	
Property insurance on other property	
Maintenance on other property	
HOA fees on other property	
Other	
Bankruptcy payment a month (circle one; Deducted from check OR Mail in payment)	
TOTAL	

Please fill in the expenses sheet as is the most accurate for your current financial situation. Include a 0 or N/A in those areas which do not apply to your situation.

HELPFUL HINTS FOR LOAN MODIFICATION

(Below is an additional checklist to ensure potential documents are submitted via DMM Portal)

Mortgage Statement:

Do you have a 2nd or 3rd lien on the property? If so, provide lien holder's information. _____

Lease agreements on rental property

Verification of mortgage payment on rental property _____

Real Estate tax bill on all property

HOA statement and or coupon book

Proof of homeowners' insurance

Current Utility bill

Hardship letter

List date Hardship started in letter and MUST sign and date _____

Most lenders require you show an involuntary reduction of income and/or an unavoidable increase in expenses.

Essential elements of the letter:

- include identifying information: your name, address, phone, account number
- state the type of work-out plan you are seeking
- describe your situation-what cause you to fall behind in your payments and any other "hardship" circumstances. Most lenders will look for some type of hard-luck circumstances that were beyond your control.
- if you are seeking to keep your home, include a detailed budget and plan for making future payments.
- be specific as to how your plan will work- how much you can pay per month and the starting date
- include contact information for yourself and your advocate, if you have one.

Examples of involuntary reduction of income:

- lay-off
- reduction of hours or wages
- forces to take a lesser paying job after a lay-off
- death of a borrower
- bad self-employment year (despite your best efforts)
- permanent or short term disability
- serious illness of a household member
- divorce

Examples of unavoidable increase in expenses:

- uninsured major medical expenses
- natural disaster
- unanticipated urgent property repairs
- unavoidable child care expenses
- increase in property taxes
- increase in the adjustable interest rate

INCOME INSTRUCTION

- 1. Pay check stubs from an employer:
2 months current pay stubs. To be kept current during modification process. _____
- 2. Self-employed:
3 most recent quarterly profit and loss. All pages must be signed and dated _____
- 3. Social Security:
Current year award letter(s) _____
- 4. Pension:
Most recent statement of benefits, and bank statements must show deposit.
- 5. Rental Income:
If is reflected on schedule E you need; current copy of lease agreement _____
30 days consistent rent deposit proof (i.e. bank statements) _____
- 6. Non Borrower Contributions:
Proof of income
Signed (possibly notarized) Non Borrower Contribution Letter: _____
- 7. Child Support/Alimony
Include a copy of the final order _____
Must be identifiable on bank statements _____

**Letter of explanation including HOW OFTEN, WHAT IS BASES ON. SIGNED AND DATED IF;
you receive OVERTIME _____
you receive BOUNSES _____
you receive COMMISISON _____

**PROOF OF ANY AND ALL INCOME MUST BE PROVIDED. (I.e. Food Stamp Award Ltr)

BANK STATEMENTS

ALL PAGES, even if blank, MUST be provided. NO online statements!

Personal Bank statements: last 2 Months _____
Business Bank statements: last 4 Months _____

TAX RETURN

All of the 2014 tax returns. SIGNED AND DATED.

- 1. If line 7 reflects income you must: attach W2's _____
- 2. If line 11 reflects income you must: provide divorce decree with proof _____
- 3. If line 12 reflects income you must: attach Schedule C _____
- 4. If line 15a or 16a reflects income you must: provide letter of explanation _____
- 5. If line 17 reflects income you must: attach schedule E. _____

Abbreviations:

- HAMP: Making Homes Affordable Program
- PITIA: Principal & interest, property taxes, property insurance and homeowners association
- Forbearance: end of term balloon usually 30%- interest usually does not accrue
- PRA: Principal reduction Analysis: Principal forgiveness down to 115% of market value
- NPV: Net Present Value: Will lender make more money foreclosing or modifying mortgage?
- UPB: Unpaid principal balance (balance after capitalizing arrearages)
- DTI: Mortgage Debt to Income Ratio (example: PITIA 1000/3000 = 33% DTI)
- LTV: Loan to Value (how much is the loan in comparison to home value)
- Partial Claim: Partial Claim: FHA's Term for forbearance or balloon
- MTMLTV: mark-to-market loan-to-value: (i.e. as the size of the loan's current principal balance relative to the home's value decreases).