PACE LAW SCHOOL
PACE UNIVERSITY

HELP ME SAVE MY HOUSE! HOW BANKRUPTCY CAN SAVE THE DAY

DECEMBER 7, 2013

CENTER FOR CONTINUING LEGAL EDUCATION

Training Attorneys to Better Serve Their Clients and Communities Since 1994

"This publication is designed to provide information in regard to the subject matter covered. It is sold and distributed with the understanding that the publisher is not engaged in rendering legal, accounting or other professional service. If legal advice or other expert assistance is required the services of a competent professional person should be sought."

--from a Declaration of Principles, jointly adopted by the American Bar Association and the Committee of Publisher and Associations.

Pace – Bridge the Gap
Bankruptcy Basics
December 7, 2013

Dawn Kirby, Esq.
DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP
Rattet Pasternak Bankruptcy Practice Group
One North Broadway, 11th Floor
White Plains, New York 10601
(914) 681-0200
dkirby@ddw-law.com

Wendy Marie Weathers, Esq.
Cabanillas & Associates, P.C.
Consumer Bankruptcy & Foreclosure Defense Attorneys
245 Main Street, Suite 210
White Plains, NY 10601
(914) 385-0292 ext. 158
WWeathers@cabanillaslaw.com

8:40 am – 8:45 am (5 minutes)

I. Introduction – Bankruptcy Themes

a. Themes in bankruptcy
   i. Fresh start. Making the best out of a bad situation. Most individual debtors have experienced illness, job loss, divorce.
   ii. Fair distribution to all creditors. It's a Mad, Mad, Mad, Mad World! Creditor competition for limited assets. Structure for dividing up available funds.
   iii. Automatic stay (11 U.S.C. 362). Give the debtor breathing room.
b. Bankruptcy reference materials
   i. Bankruptcy Code (Title 11 U.S. Code)
   ii. Bankruptcy Rules (Federal Rules of Bankruptcy Procedure)
   iii. Local Rules for each District (SDNY, EDNY…etc)
   iv. Judge's Rules (only some Judge's)
c. BAPCA Bankruptcy Abuse Prevention Consumer Act, October 17, 2005
   i. Means test
   ii. Elevated priority for domestic support obligations
   iii. Limited time to make decisions regarding valuable leases
   iv. Credit Counseling
d. Bankruptcy statistics
   i. FY 2011 to FY 2012: 14% drop in bankruptcy cases filed.
   ii. FY 2012 to FY 2013: 12% drop in bankruptcy cases filed.

8:45 am – 9:05 am (20 minutes)

II. Chapter 7, Chapter 11 and Chapter 13: What's the difference?

11 U.S.C. § 109: Who may be a debtor

a. Chapter 7: Liquidation for an individual or a business

i. Debtor receives a "fresh start" through a discharge of debt (11 U.S.C. §727). Discharge is the release of all liability from certain debts.

ii. ALL non-exempt assets are liquidated for the benefit of creditors. (businesses, cars, jewelry, collectibles, stock, lawsuits…etc)
   1. usually, only assets owed at the time of the filing can be liquidated – however, some property received in the following 180 days may be subject to the trustee
   2. due diligence on the part of the attorney is a must!!
      a. Credit report
      b. Appraisals on home, jewelry
      c. Look at copies of insurance policies
      d. Look at receipts
      e. Tax returns (at least 2 years)
      f. Pay stubs (6 months)
      g. Bank statements (6 months)
      h. All documents signed by client under penalty of perjury and *certified by attorney*
   3. In some cases assets may be "bought back"
   4. Buy back has to be approved by the Court, on notice to all creditors
   5. Court must be convinced that purchase will yield the estate the highest and best price

iii. Debtor maintains EXEMPT assets (NY Debtor/Creditor Law and CPLR 5200s)
   1. Homestead exemption increased from $10,000 to $50,000 in August 2005 (or $2,500 in cash)
   2. One Vehicle: up to $2,400 in value
   3. All monies held in retirement vehicles (IRA, 401K, 403b)

iv. Role of chapter 7 trustee
   1. stands in the shoes of the debtor
   2. responsible for examination of the debtor
   3. marshall assets
   4. liquidate and distribute
   5. commission

b. ***Chapter 13: Individual Reorganization***

i. Requirement: Must have regular income

ii. 13 vs. 11: Unsecured Debts of less than $383,175 and Secured debts of less than $1,149,525 (§109)

iii. Enables a person to keep a valuable asset (eg. equity in home)

iv. Role of Chapter 13 trustee
   1. one trustee for entire district
   2. sale responsibility to examine debtor
   3. no liquidation function – instead, collects plan payments and distributes to creditors.

v. Plan of Reorganization: filed with petition or 15 days after (Rule 3015).

   1. debtor proposes a "plan" to repay creditors over time (3 to 5 years – depending on whether income is below/ above state median income).

   2. All creditors are subject to the automatic stay during the bankruptcy (while plan is pending).

   3. plan must pay unsecured creditors at least what they would receive in a liquidation and all "disposable income" has been pledged to the plan.
      a. Disposable income:
         i. income (other than child support) less amounts reasonably necessary for the maintenance or support of the debtor or dependants.
         ii. determined by the Means Test

   4. Secured creditors (mortgage, vehicle finance companies) and priority creditors (taxes) must be paid in full but may be stretched out over the life of the plan. – saves homes in foreclosure.

   5. Confirmation Hearing before Judge, on notice to all creditors.
      a. No later than 45 days after 341 Meeting
      b. Judge must decide whether plan is feasible and meets standards for confirmation (§1324, 1325).
      c. Creditors can object

vi. Loss Mitigation Program: Effective Jan 5, 2009

1. provides a forum for open communication between debtors and mortgage companies to reach consensual resolutions when property is at risk of foreclosure.

2. Either side may request a *Loss Mitigation Order*:
    a. Sets deadlines for exchange of contact information, reports and information
    b. Usual deadlines are extended
        i. pending lift stay motion by bank will be adjourned
        ii. deadline to object to confirmation extended
    c. all communications are inadmissible under FRE 408 and not considered violative of the automatic stay
    d. Order even suggests method and content of discussions
    e. Requires status updates to the Court.

c. Chapter 11: Reorganization for Businesses and Individuals

i. More complex, lengthy and expensive

ii. Business now operates in a "fish bowl"
    1. monitored by Court, US Trustee's Office and Creditors
    2. Creditors tend to be much more active

iii. Common Goals:
    1. Gain "breathing room" from creditors – not allowed to pay unsecured pre-petition debts after filing.
    2. Stop litigation/ judgment
    3. Shareholder disputes
    4. Keep Union from walking off job
    5. Stop eviction
    6. Prevent Repossession
    7. Assumption/Assignment or rejection of executory contracts and leases 11 U.S.C. § 365
        a. Shed unwanted leases or onerous contracts
        b. Sell leases which are below market
        c. Gain time to repay arrears

iv. Plan of Reorganization: similar principles as ch. 13 -
    1. 5-year Plan to repay creditors 11 U.S.C. §1123 - §1129
    2. Creditors must receive at least what they would get in a liquidation – in fact, liquidation analysis is a required to to plan.

v. Sale of assets 11 U.S.C. § 363

d. The Other Chapters
    i. Chapter 9 – Municipalities
    ii. Chapter 12 – Family Farmer / Family Fisherman
    iii. Chapter 15 – Cross-Border Insolvencies

e. Involuntary Chapter 11
    i. Filed by three or more entities, each holding a claim that is not contingent or subject to bona fide dispute

9:05 am – 9:15 am (10 minutes)

III. The Basic Procedures and Documents

a. How to manage case information on ECF and PACER
    i. http://pacer.psc.uscourts.gov/
    ii. www.nysb.uscourts.gov
    iii. Access to all documents filed in bankruptcy cases
    iv. Any person can have PACER access
    v. Only attorneys can have ECF password, which permits filing of documents in a case.
    vi. Search cases for example forms

b. Rsources
    i. PACER Password http://pacer.psc.uscourts.gov/
    ii. Petition, Schedules, Means Test http://www.uscourts.gov/bkforms/bankruptcy_forms.html#official
    iii. Interactive Proof of Claim Form: http://www.uscourts.gov/rules/BK_Forms_1207/B_010_1207f.pdf
    iv. Bankruptcy Basics: http://www.uscourts.gov/bankruptcycourts/bankruptcybasics.html

c. Filing Documents
    i. Petition: "1st 3 pages" – basic information and signature pages
    ii. Schedules of Assets and Liabilities:
        1. Schedule A – Real Property
        2. Schedule B – Personal Property
        3. Schedule C – Exempt Property (individuals only)
        4. Schedule D – Secured Creditors
        5. Schedule E – Unsecured Priority Creditors
        6. Schedule F – Unsecured Creditors
        7. Schedule G – Executory Contracts
        8. Schedule H – Co-Debtors
        9. Schedule I – Income (individuals only)
        10. Schedule J – Expenses (individuals only)
    iii. Statement of Financial Affairs
    iv. Means Test: for consumer debtors
    v. Corporate Resolution: if it is commercial debtor (7 or 11)
    vi. Affidavit Pursuant to Local Rule 1007: Chapter 11 only: affidavit of a officer/ director/ shareholder of the Debtor providing basic information such as:
        1. nature and location of the business
        2. reason for filing
        3. plan for reorganization

4. twenty largest unsecured creditors
5. five largest secured creditors

9:15 am – 10:00 am (50 minutes)

IV. The Loss Mitigation Program

A. The Loss Mitigation Program (5 minutes)

Benefit: The client gets a Federal Judge to oversee the mortgage modification process which expedites and streamlines the process, and gives you an enforcement mechanism if the bank is not "behaving".

Ever hear the frustrating stories from clients of spending hours on the phone and gathering documentation, just to be told the bank didn't get the documents, the documents are stale and need updating, and by the way the bank is going forward with a foreclosure at the same time?

Manhattan, Bronx, Westchester, Rockland - all judges
Brooklyn, Queens, Staten Island, Nassau, Suffolk - some judges

The debtor's counsel files a request to participate in Loss Mitigation. The Court enters an order directing the parties to participate. The bank is required to provide a contact name and number (a real person!) who will communicate with the Debtor, attend court status conferences, and report to the court on the progress of the modification.

FORMS: http://www.nysb.uscourts.gov/loss-mitigation

B. When Things Go Wrong: Sanctions (25 minutes)

The Debtor and counsel may receive sanctions if the bank fails to comply.

Loss Mitigation Program Procedures

- The Loss Mitigation Program Procedures, revised June 17, 2013 impose an obligation to participate in good faith. The Procedures provided in part:

> **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.
>
> **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**. (emphasis added)

- Chief Judge Cecelia G. Morris recently addressed the Court's sanction power under the Loss Mitigation in depth in *In re Bambi*, 492 B.R. 183 (Bankr. S.D.N.Y. 2013). Judge Morris stated in part,

The Loss Mitigation Program Procedures of the Southern District of New York specifically allow for the imposition of sanctions if a party fails to negotiate in good faith. The power to sanction parties who fail to participate in good faith during Loss Mitigation comes from the bankruptcy courts' "inherent power to supervise and control its own proceedings and to sanction counsel or a litigant for bad-faith conduct or for disobeying the court's orders. This power may be used to require parties acting in bad faith to pay for the opposing party's attorney's fees. [citations omitted] Id. at 190 – 191.

Violation of the Automatic Stay:

- Bankruptcy Code § 362(k): (1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and in appropriate circumstances, may recover punitive damages. (2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subjection against such entity shall be limited to actual damages.

- Actual damages may be imposed where a creditor's behavior was willful, meaning the creditor knew of the pending bankruptcy, but chose to act despite that knowledge. See In re Ebadi, 448 B.R. 308 (Bankr. S.D.N.Y. 2011). If fees and costs associated with vindicating a debtor's rights are reasonable and necessary, a bankruptcy judge's decision to make the violator to pay compensatory damages in the actual amount of the debtor's legal fees is justified. In re Sturman, 2011 WL 4472412 (S.D.NY.). Punitive damages under Bankruptcy Code §362(k)(2) require a higher showing of bad faith, malice or particularly egregious behavior. In re Westridge, 2009 WL 3491164 (Bankr. S.D.N.Y) (imposing punitive damages pursuant to Code §362(k)(2) for willful violation of automatic stay in which creditor acted in an egregious manner by demanding payment and threatening debtor at the 341 meeting and one time at the debtor's home).

Violation of Discharge Injunction.

- Bankruptcy Code § 524(a)(2). A finding of contempt, compensatory damages and sanctions are available if a creditor "has knowledge, actual or constructive, of the discharge and willfully violates it by continuing

with activity complained of." In re Ramos, S.D.N.Y. Case No. 10-23019 (Drain, J.), *citing*, In re Torres, 367 B.R. 478 (Bankr. S.D.N.Y. 2007). In such a case, "'attorneys' fees may be awarded if the creditor acted in "bad faith, vexationsly, wantonly or for oppressive reasons."' Ramos at 6, *citing* In re Dabrowski, 257 B.R. 394 (Bankr. S.D.N.Y. 2001).

Civil Contempt:

- In re Kalikow, 602 F.3d 82 (2d Cir. 2010) (holding, "the statutory contempt powers given to a bankruptcy court under §105(a) complement the inherent powers of a federal court to enforce its own orders). See also, In re Frankel (*Balaber-Strauss v. Markowitz*), 192 B.R. 623 (Bankr. S.D.N.Y. 1996)(citing numerous cases for the proposition that bankruptcy courts have the inherent power to exercise civil contempt powers to enforce their orders).

Examples in my experience:

- Failed to update computer system to recognize agreed modification - $10,000
- Same bank transferred the loan and mis-reported the Debtor in default (settlement pending, est. $25,000)
- Failed to respond to modification package for 5 months - $9,000
- Alleged that the loan was sold to an "investor" who did not permit any mortgage modifications - $8,750

C. "Lien Stripping" in Chapter 13 (10 minutes)

Benefit: 2nd and 3rd mortgages that are completely "underwater" can be removed as a lien from the home, turned into "unsecured debt", and discharged - in Chapter 13 only.

Section 1325 of the Bankruptcy Code allows a Chapter 13 Debtor to remove consensual liens recorded against the debtor's real property that are completely unsecured by any equity in the Debtor's primary residence. The lien release is only effective after the Chapter 13 debtor successfully completes their chapter 13 plan and makes all payments.

Example #1. When Jane Smith purchased her primary residence in 2004, she paid $500,000 for the home. She obtained a first mortgage with JP Morgan Chase in the amount of $400,000. Her mortgage broker helped her get a second mortgage at the closing for $100,000 to cover the rest of the purchase price so she didn't have to come up with any money down at closing (zero down, what a great idea!). A year later, she decided she wanted to install an in-ground pool since it would add value to her house (not!). Jane went back to her mortgage broker who was able to get her a $50,000 home equity line of credit to pay for the pool.
In October 2009, Jane lost her job and was unable to get another job until last month making half of what she earned before. Also, during the past year, Jane defaulted on her first and second mortgage, her home equity line and started charging all of her living expenses on her credit cards, which now have a balance of $60,000. Jane hoped to refinance her home to

bring her mortgage current and access some equity to settle her credit card debt, but her house is now only worth $390,000 even with the new in-ground pool. What does Jane do?

House Appraisal		$390,000
First Mortgage	$400,000	All but $10,000 is secured so the whole lien remains
Second Mortgage	$100,000	-$110,000 Can be "Stripped" off in Chapter 13
Home Equity Line of Credit	$50,000	-$160,000 Can be "Stripped" off in Chapter 13

Example #2. Suppose Jane's home is worth $450,000, instead of $390,000

House Appraisal		$450,000
First Mortgage	$400,000	$50,000 equity left
Second Mortgage	$100,000	All but $50,000 is secured so the whole lien remains
Home Equity Line of Credit	$50,000	-$100,000 Can be "Stripped" off in Chapter 13

D. Remove and Discharge Non-Consensual Judgments (10 minutes)

Benefit: Debtors will judgments against them may be able to remove the judgment liens from their home, turned into "unsecured debt", and discharged - in Chapter 7 or Chapter 13.

Section 522(f) of the Bankruptcy Code allows a debtor to remove pre-petition non-consensual judgment liens recorded against the debtor's real property to the extent that they impair the debtor's homestead exemption. A judgment become a lien on real property if the judgment is docketed in the NY Supreme Court where the property is located. This is a great option for clients with credit card judgments against them.

Example #1. John Doe's primary residence is appraised at $500,000. John has a 1st mortgage with Chase Bank in the amount of $300,000 and a 2nd mortgage Bank of America in the amount of $50,000.

Due to John's financial difficulties, a few credit card companies sued him and obtained judgments against him. Citibank has a $25,000 judgment, American Express has a $10,000 judgment and Discover has a $30,000 judgment.

In Bankruptcy, John could remove all of the credit card judgments as liens against his home:

House Appraisal		$500,000
Less First Mortgage	$300,000	
Less Second Mortgage	$50,000	
Value in Property that can be impaired by liens		$150,000
Less Homestead Exemption	$150,000	($0.00 left)
Citibank Judgment	$25,000	Impairs homestead
American Express	$10,000	Impairs homestead
Discover	$30,000	Impairs homestead

Example #2. Suppose John's home is worth $400,000, instead of $500,000

House Appraisal		$400,000
Less First Mortgage	$300,000	
Less Second Mortgage	$50,000	
Value in Property that can be impaired by liens		$50,000
Less Homestead Exemption	$150,000	(-$100,000.00 left)
Citibank Judgment	$25,000	Impairs homestead
American Express	$10,000	Impairs homestead
Discover	$30,000	Impairs homestead

Example #3. Suppose John's home is worth $700,000, instead of $500,000

House Appraisal		$700,000
Less First Mortgage	$300,000	
Less Second Mortgage	$50,000	
Value in Property that can be impaired by liens		$350,000
Less Homestead Exemption	$150,000	$200,000.00 left
Citibank Judgment	$25,000	Does NOT Impair homestead
American Express	$10,000	Does NOT Impair homestead
Discover	$30,000	Does NOT Impair homestead

E. Walking Away

Benefit: When the FMV is much lower than the mortgage, or the debtor's income is too low to qualify for a modification, or the debtor simply does not want to stay in the home, the debtor can walk away from the property with a discharge of any deficiency – in a Chapter 7

10:00 – 10:10 AM 10 MINUTE BREAK

10:10 – 10:55 (45 Minutes)

V. **Modification Programs**

a. **Loss Mitigation**

i. **Loan Modification**	**10 minutes**
ii. **HAMP Guidelines**	**10 minutes**
iii. **Short Sales**	**10 minutes**
iv. **Deed in Lieu**	**5 minutes**

b. **NATIONAL SETTLEMENT AGREEMENT** **10 minutes**

Loan Modification

What is a loan modification?
A Loan Modification Agreement modifies the original terms of the loan between the mortgagor and the mortgagee.

The loan can be modified in several ways:

1. Change the monthly mortgage payment
2. Extend the payment term of the loan
3. Create a new principal balance due
4. Change the interest rate

Arrears can be capitalized in a modification.

In evaluating whether to proceed with a loan modification, a few concerns should be addressed:

1. Is title clear and marketable?
2. Are there open judgment and/or mortgages?
3. Are the mortgagors in bankruptcy?

What kinds of loan modifications are available?

***HAMP* (HOME AFFORDABLE MODIFICATION PROGRAM)**– Tier 1, Tier 2, FHA-HAMP

The Making Home Affordable Program (HAMP) is a critical part of the Obama Administration's comprehensive strategy to help homeowners avoid foreclosure, stabilize the country's housing market, and improve the nation's economy.

Hamp Tier 1 – This is HAMP (Government Modification) which property must be either a Single Family home or Multi-Family but with no rental income. Borrower MUST be living in property and MUST be Primary Residence. This LM is eligible for Principal Forgiveness, Principal Forbearance and 2% interest rate.

Hamp Tier 2 – This is HAMP (Government Modification) which property must be a multi-family with rental income being stated. Tier 1 modifications that have been denied can also apply for HAMP Tier 2. This LM is eligible for Principal Forgiveness, Principal Forbearance and interest rates usually start at 3.0 - 3.5%.

FHA-HAMP (NEW) – This modification program is for Loans under FHA (Federal Housing Administration) and which usually carry a MI (Mortgage Insurance) or PMI (Private Mortgage Insurance). Because of this insurance, the loan can NOT have a Principal Reduction applied to it, but Principal Forbearance is now a new option. Since February 2013, there is no max in months behind for applying for FHA-HAMP modification.

CHAMP (Chase Only) – This is a program offered ONLY by CHASE Bank for qualifying clients. It combines the options from HAMP of reducing interest rates to as low as 2% on Single Family homes and as low as 3% on multi-family. It also allows for the extension of the Amortization on loan originally set to mature in less than 25 years. Loans may be extended to 40 years based on approval by investor. Perm Loan Modification contract will also have wording of "Balloon Payment" but this is not really a balloon. This amount will be the balance at maturity date of the original loan.

FHA Modification – This modification is for FHA Loans which do NOT qualify for FHA-HAMP and can come current in less than 1 year. The determining factor will be the residual monthly income and the amount in arrearage accumulated.

Fannie Mae – (Federal National Mortgage Association) Fannie Mae is a Government Sponsored Enterprise (GSE) which guarantees loans for banks. At times these loans may have PMI or MI included in the escrow. All loans under Fannie Mae can be approved for HAMP Tier 1 or Tier 2 and for Fannie Mae Investor modification. All options can be applied on this loan modification except for Principal Reduction. Most commonly, when approved for HAMP we see these loans being amortized for 30-40-50 years. These new loan modification agreements also come with new maturity dates.

Freddie Mac – (Federal Home Loan Mortgage Corporation) Freddie Mac is a Government Sponsored Enterprise (GSE) which guarantees loans for banks. All loans under Fannie Mae can be approved for HAMP Tier 1 or Tier 2 and for Fannie Mae Investor modification. All options can be applied on this loan modification except for Principal Reduction. Most commonly, when approved for HAMP we see these loans being amortized for 30-40-50 years. These new loan modification agreements also come with new maturity dates.

In-House – These LM are usually given to borrowers whose investors do not participate in HAMP and whose loans are NOT with Fannie or Freddie. (Ex: HSBC, Hudson City, Aurora, Flushing Bank, etc.) These loans get rated around 4.5% interest and usually never include forgiveness or deferment.

Other In-House loan modifications may even be better than what gets offered by HAMP or other modification programs. Such modifications are mostly granted by Ocwen and Bank of America. Typical examples of these loan mods are: 2% fixed 30-40 years with approx 30-50% principal reduction

Department of Justice Modification – These modifications are focused on Principal Reduction and are granted based on the participation of the bank/investor/trustee managing the loan. This modification usually comes from the big banks; Chase, Citibank, Bank of America, Wells Fargo, Ocwen and other banks included in the February 2012 settlement between the banks and the US Government. Banks must re-pay the public by reducing the principal balance on Loan Modifications and accepting short-sales. The amount which banks must total in principal reductions is a target of $25Billion. This amount is currently in a countdown as in first come first get.
See link: http://www.justice.gov/opa/pr/2012/February/12-ag-186.html

Treasury Department Modification – These modifications are similar to that of the Department of Justice in which the government monitors the modification results but don't require principal reduction. Instead, this program supervises the loan modification approvals under the HAMP program, and if 2nd mortgage loan is still outstanding and underwater at time of loan modification approval; this program will eliminate the 2nd mortgage automatically.
See Link: http://www.treasury.gov/initiatives/financial-stability/reports/Pages/mha_publicfile.aspx

Streamline Modification Initiative (NEW) – This LM program is being initiated by FHFA (Federal Housing Finance Agency) for loans belonging to Fannie Mae or Freddie Mac to be automatically rolled into modification programs with very little documents. This is NOT the HAMP Program so home owners MUST be aware of this. The new program will be rolled out on July 1, 2013 and borrowers will be receiving these loans modification offers by mail. This will be a typical Fannie/Freddie LM.

Requirements:

- Must be at least 90 days past due
- Must not be more than 24 months past due
- Must have acquired the loan at least 1 year prior (July 2012 or before)
- LTV must be 80% or more
- Loans which have been modified more than twice are NOT eligible

Key Terms:

Principal Forgiveness/Reduction – This term is used when principal amount owed (after capitalization of arrears) is reduced. This new interest bearing amount is usually 100-115% of Property Value. The amount reduced or forgiven may be applied immediately or spread across 3 years in equal amounts depending on performance of payments.

Principal Forbearance/Deferment – This term is used when part of the principal is being removed from the interest bearing loan amount and being placed on a "Forbearance or Deferment" account. At times, this may also be called "Partial Claim" when being applied to the FHA Loan Modification. This Forbearance/Deferment is usually applied to loans with PMI or MI where property value is less than loan amount, but because of the insurance, principal can't be forgiven.

Maturity Date – This is the date in which the loan is set to expire.

Amortization – This is the time (term) which a loan is going to get re-paid on.

PMI/MI – Private Mortgage Insurance/Mortgage Insurance – Insurances placed on loans (money borrowed).

New HAMP Guidelines Version 3.4 (eff June 1, 2012)

1. Tier 1 Eligibility (1.1.2 HAMP 1 Eligibility Criteria)

Tier 1 Eligibility (Pg. A-37)	Tier 1 Non-Eligibility
Single Family	Previously modified prior to June 1, 2012
Owner occupy	Non owner occupy
Must be in imminent default or Delinquent	
Has not been previously modified under HAMP (pg. A-37)	

***Any LM or TP approved prior to June 1st, 2012 will be considered Tier 1. (Pg. A-37)**

2. Tier 2 Eligibility (1.1.3 HAMP Tier 2 Eligibility)

Tier 2 Eligibility (Pg. A-38)	Tier 2 Non-Eligibility
Multi-Family	Previously modified under Tier 2
Rental Properties	Second Home or Vacation Home
Must be in imminent default or Delinquent (Pg.A-39)	

3. Standard Modification Waterfalls

HAMP Tier 1 Waterfall	HAMP Tier 2 Waterfall
1. Capitalization- Principal +Arrears consisting of Interest & Escrow ONLY	Capitalization- Principal +Arrears consisting of interest & Escrow ONLY
2. Interest Rate Reduction-down to 2%	Interest Rate Adjustment- based on fixed rate 30yr loans on weekly PMMS Rate (will be posted on a weekly basis)
3. Term Extension- max480 months from LM effective date.	Term Extension- max 480 months from LM effective date
4. Principal Forbearance- applied if necessary to lower ratio to 31%, max 30% of new UPB can be applied into forbearance.	**Principal Forbearance-** applied if loan's pre-modification market LTV is greater than 115%. **There is no max amount on how much a bank can apply in forbearance.
	Minimum Reduction-under HAMP tier 2 LM must be of at least 10% from the P&I payment. -6.3.3 (Pg. A-73)

4. Alternative Modification Waterfalls

HAMP Tier 1 Alt Waterfall	HAMP Tier 2 Alt Waterfall
1. Capitalization- Principal + Arrears consisting of Interest & escrow ONLY	
2. Reduce UPB- to 115% of Market Value	
3. Calculate new payment –keeping same interest % and amortizing new UPB amount based on the remaining terms on	**Principal Forgiveness-** applied if loan's pre-modification market LTV is greater than 115%. **There is no max amount on how much a

existing loan.	bank can apply in forgiveness.
4. If the new payment falls under HAMP 31% ratio, Trial plan will be granted and LM will be turned permanent upon completion of TPP.	

5. Continued Eligibility due to Change of Circumstances (Pg A-40)/Loss of Eligibility (Pg. A-93)
    - If loan modified under Tier 1 and loses good standing may be eligible to receive a HAMP Tier 2, 12months after the HAMP Tier 1 modification effective date.
    - <u>If loan modified under Tier 2 and loses good standing is NOT eligible for another **HAMP modification on that loan.**</u>

6. HAMP LM Limits- 1.2(Pg. A-42)
    - **An individual as a borrower or co-borrower may receive only one modification under HAMP Tier 1.**
      (Ex. Jose and Pedro are both on a Loan but Pedro live on another property. If Jose successfully modifies his property by default Pedro is not eligible to modify his property under Tier1.)
    - An individual as a borrower or co-borrower may receive up to three HAMP Tier 2 permanent modifications of three different mortgage loans.
    - HAMP Rations -6.1 (Pg. A-68)

7. HAMP Ratios -6.1 (Pg. A-68)

HAMP Tier 1 Ratio	HAMP Tier 2 Ratio
Ratio prior to modification must be greater than 31% and post modification greater than or equal to 28% and less than or equal to 31%.	**Ratio post-modification HDTI must be between 25%-42% which includes PITIA.

8. **RMA & RPC-4.1.1.2 (Pg. A-57)
    - New RMA includes Rental Property Certification.
    - Borrower certifies that he or she intends to rent the property for at least five years following the modification effective date.
    - Property is not a secondary home
    - Borrower will make every attempt to keep the property rented.

9. **Rental Income -5.1.6 .2(Pg. A-65)
    - Must Provide Proof of Rental income via: Schedule E, Lease Agreements, bank Deposits.
    - Only 75% of monthly gross rental income should be used for Tier 2.

FEDERAL HOUSING FINANCE AGENCY

NEWS RELEASE

For Immediate Release
March 27, 2013

Contact: Corinne Russell (202) 649-3032
Stefanie Johnson (202) 649-3030

FHFA Announces New Streamlined Modification Initiative

Borrowers and Servicers to Benefit From Simplified Program

Washington, DC – The Federal Housing Finance Agency (FHFA) today announced that Fannie Mae and Freddie Mac will offer a new, simplified loan modification initiative to minimize losses and to help troubled borrowers avoid foreclosure and stay in their homes. Beginning July 1, servicers will be required to offer eligible borrowers who are at least 90 days delinquent on their mortgage an easy way to lower their monthly payments and modify their mortgage without requiring financial or hardship documentation.

The new Streamlined Modification Initiative eliminates the administrative barriers associated with document collection and evaluation. Eligible borrowers must demonstrate a willingness and ability to pay by making three on-time trial payments, after which the mortgage will be permanently modified. Homeowners are encouraged to continue working with their servicer to evaluate all of their foreclosure prevention options. Documenting income and financial hardship could result in a modification with additional savings for the borrower.

"The Streamlined Modification Initiative adds to the suite of home retention tools offered by Fannie Mae and Freddie Mac," said FHFA Acting Director Edward J. DeMarco. "This new option gives delinquent borrowers another path to avoid foreclosure. We will still encourage such borrowers to provide documentation to support other modification options that would likely result in additional borrower savings."

The Streamlined Modification Initiative builds on the principles of the Servicing Alignment Initiative by encouraging servicers to resolve delinquencies earlier and in a more consistent and expeditious manner to keep more people in their homes and to minimize losses to Fannie Mae, Freddie Mac and taxpayers. The program expires August 1, 2015.

The program is available to those homeowners with loans owned or guaranteed by Fannie Mae or Freddie Mac. Since being placed into conservatorships, Fannie Mae and Freddie Mac have completed 2.7 million foreclosure prevention transactions, including 1.3 million loan modifications.

Attached: Frequently Asked Questions
Link to Fannie Mae Guidance to Lenders
Link to Freddie Mac Guidance to Lenders

Frequently Asked Questions
Streamlined Modification Initiative

1. What is the Streamlined Modification Initiative?

The new Streamlined Modification Initiative is designed to help more borrowers with mortgages owned or guaranteed by Fannie Mae and Freddie Mac maintain homeownership. The initiative builds on lessons learned with the Servicing Alignment Initiative (SAI) - namely that early, effective borrower outreach and engagement is critical for successful modification solutions. Under the Streamlined Modification Initiative, many borrowers who are at least 90 days delinquent will be sent a Streamlined Modification Solicitation Offer that includes a Trial Period Plan specifying the dollar amount of the new mortgage payment based upon a fixed interest rate, extending the payment terms to 40 years, and providing principal forbearance for certain underwater borrowers. Borrowers will not be required to document their hardship or financial situations to receive the Streamlined Modification.

2. Why is FHFA directing Fannie Mae and Freddie Mac (the Enterprises) to launch the Streamlined Modification Initiative?

Throughout the financial crisis, one of the biggest challenges in assisting troubled homeowners has been the administrative challenge of document collection. Since the inception of the Making Home Affordable (MHA) program, FHFA, Fannie Mae and Freddie Mac have been measuring and monitoring borrower and servicer responsiveness to borrower assistance programs to understand why many borrowers are not able to get a loan modification. Removing the administrative barriers associated with document collection and servicer evaluation should enable significantly more borrowers to access the available options for home retention.

3. When will the Streamlined Modification Initiative be available?

The Streamlined Modification Initiative will begin July 1, 2013 and end August 1, 2015. Fannie Mae and Freddie Mac are issuing guidance to their mortgage servicers to implement the Streamlined Modification Initiative.

4. What are the eligibility requirements?

The loan must be owned or guaranteed by Fannie Mae or Freddie Mac. Homeowners must be 90 days to 24 months delinquent, and have a first-lien mortgage that is at least 12 months old with a loan-to-value ratio equal to or greater than 80 percent. Loans that have been modified at least two times previously are not eligible. Click on these links to see if your loan is owned or guaranteed by Fannie Mae or Freddie Mac.

5. How is the Streamlined Modification Initiative different from other Fannie Mae or Freddie Mac mortgage modification options?

The Streamlined Modification builds on the success of the Standard Modification program that Freddie Mac and Fannie Mae announced last year under the Servicing Alignment Initiative. Starting July 1, 2013, servicers will be required to send a Streamlined Modification Solicitation Offer to borrowers who are at least 90 days delinquent and meet the initiative's eligibility requirements. The key difference is that borrowers will not be required to document their hardship or financial situation, but will be able to accept a Streamlined Modification Offer by simply making the trial period payments and agreeing to the terms of the modification. Borrowers will also be advised that more beneficial terms may be available if they document their financial situation and work with their servicer to pursue the full range of foreclosure prevention options.

6. How does the Streamlined Modification Initiative differ from the Home Affordable Modification Program (HAMP)?

Borrowers can look to take advantage of HAMP as soon as they run into financial troubles, but must provide financial, income and hardship documentation to their servicer to be considered for the program. The Streamlined Modification Initiative is only available for borrowers who are at least 90 days delinquent and it does not require borrowers to provide financial or hardship documentation. HAMP enables servicers to evaluate the borrower for modification terms based on an affordable payment that is 31 percent of the borrower's gross monthly income. HAMP may provide a more affordable monthly payment than the Streamlined Modification Initiative. In addition, borrowers may be eligible to receive financial incentive payments under HAMP.

7. Will all delinquent borrowers with Fannie Mae or Freddie Mac mortgages receive a Streamlined Modification Trial Period Plan after July 1, 2013 if he or she is 90+ days delinquent?

As of July 1, 2013, servicers must identify eligible borrowers who are 90 days to 24 months delinquent and send them an offer letter that states the terms of the modification, including the monthly payment required for a Streamlined Modification. These eligible borrowers can accept a Streamlined Modification Trial Period Plan by sending the specified payment to the loan servicer.

8. How long will the Trial Period last?

Similar to the Standard Modification, the Streamlined Modification Trial Period Plan will last three months. If the borrower makes on-time payments during the trial period and meets necessary criteria, the borrower will be asked to sign an agreement making the terms of the mortgage modification permanent.

9. What happens if a borrower misses a payment during the Streamlined Modification Trial Period Plan?

If the borrower misses a payment during the Streamlined Modification Trial Period Plan, the borrower will not be eligible for a permanent Streamlined Modification. However, the borrower may submit a Borrower Response Package to the servicer and will be evaluated for other alternatives to foreclosure, including other modification options.

10. Should struggling borrowers wait until the Streamlined Modification takes effect on July 1, 2013 to contact their servicer when they miss a payment?

For borrowers struggling to make their payments, calling the servicer as early as possible is the best option to ensure they are evaluated for the most appropriate alternative to foreclosure. When the borrower documents their financial situation, the servicer will be able to evaluate the borrower for alternative modification options with more beneficial terms. Calling the servicer will not exclude a borrower from receiving the Streamlined Modification solicitation.

11. When should I expect a letter from my servicer?

Servicers will be required to begin evaluating borrowers for a solicitation on July 1, 2013. Depending on the volume of delinquent borrowers and servicer capacity and systems, letters should be sent within a timely period.

12. What steps are Fannie Mae and Freddie Mac taking to discourage strategic defaults by borrowers who stop paying their loans to get a Streamlined Modification?

Fannie Mae and Freddie Mac have existing proprietary screening measures to prevent strategic defaulters from taking advantage of a Streamlined Modification. Additionally, only those borrowers with loans more than 12 months old with a mark-to market loan-to-value ratio greater than 80 percent and who have not had two or more previous loan modifications will be solicited for participation.

13. Why limit eligibility to borrowers who have missed three or more monthly payments?

Because many borrowers who miss one or two payments have a temporary hardship and often reinstate their mortgage to current status, it is most effective to target borrowers who are at least 90 days delinquent. Borrowers who are current or less than 90 days delinquent and have a permanent hardship should contact their servicer to submit a Borrower Response Package so they can be evaluated for a mortgage modification or other alternative to foreclosure.

14. Does the Streamlined Modification cover borrowers with delinquent Freddie Mac or Fannie Mae mortgages secured by second homes and/or investment properties?

Yes. Delinquent borrowers with Fannie Mae or Freddie Mac mortgages secured by second homes or investment properties are eligible to participate in the Streamlined Modification Initiative and may receive trial period plan offers, provided they also meet other eligibility criteria.

###

Short Sales

What is a Short Sale?

The lender is accepting less than the total amount due in lieu of foreclosure. Not all lenders will accept short sales or discounted payoffs, especially if it would make more financial sense to foreclose.

Requirements:

1. Written request including: property address, loan number, borrower's name, agent's name and contact information
2. Estimated HUD-1 statement
3. Financial Hardship Letter
4. Proof of Income and Assets
5. Copies of bank statements and paystubs
6. CMA
7. Purchase Agreement (Contract of Sale) and Listing Agreement

Tax Implications:

Cancellation of Debt
Seek advice from an Accountant

Deed in Lieu of Foreclosure

What is a Deed in Lieu of Foreclosure?
A Deed in Lieu of Foreclosure is a deed that is executed by the mortgagors and given to the mortgagee so the mortgagee avoids having to commence a foreclosure action in order to sell the mortgaged premises at foreclosure sale.

Eligibility:

1. Mortgagor must attempt a Short Sale
2. Mortgagor must have a listing agreement
3. Property must be listed for at least 90 days

In evaluating whether to proceed with a loan modification, a few concerns should be addressed:

1. Is title clear and marketable?
2. Are there open judgment and/or mortgages?
3. Are the mortgagors in bankruptcy?
4. Did the mortgagor file a power of attorney?
   (The Deed in Lieu is signed as "attorney in fact" and must be verified that the POA has not been revoked if the POA is more than 30 days old and an affidavit of full force and effect must be executed).

Once it is determined that the Deed in Lieu is a viable option, the following documents are executed:

1. Title affidavit (signed by the mortgagor)
2. Estoppel Agreement (signed by the mortgagor)
3. Complete property Description
4. Intention Clause

Upon execution of the above referenced documents, the documents should be recorded and it is highly recommended that a policy be purchased to insure clean title to both the mortgagor and mortgagee.

The National Mortgage Settlement

On February 9, 2012, the Attorney General announced that the federal government and 49 states had reached a settlement agreement with the nation's five largest mortgage servicers to address mortgage servicing, foreclosure, and bankruptcy abuses (the "National Mortgage Settlement"). On April 4, 2012, the United States District Court for the District of Columbia entered orders approving the settlement.

The National Mortgage Settlement is the largest consumer financial protection settlement in United States history. The National Mortgage Settlement settles certain state and federal investigations relating to mortgage servicing abuses including abuses in the bankruptcy process

The settlement covers home mortgages serviced by Bank of America, JPMorgan Chase & Co.,Citigroup Inc., Ally Financial Inc./GMAC, and Wells Fargo & Company (the "Banks")

If you believe you are eligible for relief, contact the appropriate Bank:

Bank of America – 1-877-488-7814
Chase – 1-866-372-6901
Citi – 1-866-272-4749
Ally/GMAC – 1-800-766-4622
Wells Fargo – 1-800-288-3212

National Mortgage Settlement Terms

The provisions outlined below are intended to apply to loans secured by owner-occupied properties that serve as the primary residence of the borrower unless otherwise noted herein.

I. FORECLOSURE AND BANKRUPTCY INFORMATION AND DOCUMENTATION.
Unless otherwise specified, these provisions shall apply to bankruptcy and foreclosures in all jurisdictions regardless of whether the jurisdiction has a judicial, non-judicial or quasi-judicial process for foreclosures and regardless of whether a statement is submitted during the foreclosure or bankruptcy process in the form of an affidavit, sworn statement or declarations under penalty of perjury (to the extent stated to be based on personal knowledge) ("Declaration").

A. Standards for Documents Used in Foreclosure and Bankruptcy Proceedings.

1. Servicer shall ensure that factual assertions made in pleadings (complaint, counterclaim, cross-claim, answer or similar pleadings), bankruptcy proofs of claim (including any facts provided by Servicer or based on information provided by the Servicer that are included in any attachment and submitted to establish the truth of such facts) ("POC"), Declarations, affidavits, and sworn statements filed by or on behalf of Servicer in judicial foreclosures or bankruptcy proceedings and notices of default, notices of sale and similar notices submitted by or on behalf of Servicer in non-judicial foreclosures are accurate and complete and are supported by competent and reliable evidence. Before a loan is referred to non-judicial foreclosure, Servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and loan information.

2. Servicer shall ensure that affidavits, sworn statements, and,Declarations are based on personal knowledge, which may be based on the affiant's review of Servicer's books and records, in accordance with the evidentiary requirements of applicable state or federal law.

3. Servicer shall ensure that affidavits, sworn statements and Declarations executed by Servicer's affiants are based on the affiant's review and personal knowledge of the accuracy and completeness of the assertions in the affidavit, sworn statement or Declaration, set out facts that Servicer reasonably believes would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. Affiants shall confirm that they have reviewed competent and reliable evidence to substantiate the borrower's default and the right to foreclose, including the borrower's loan status and required loan ownership information. If an affiant relies on a review of business records for the basis of its affidavit, the referenced business record shall be attached if required by applicable state or federal law or court rule. This provision does not apply to affidavits, sworn statements and Declarations signed by counsel based solely on counsel's personal knowledge (such as affidavits of counsel relating to service of process, extensions of time, or fee petitions) that are not based on a review of Servicer's books and records. Separate affidavits, sworn statements or Declarations shall be used when one affiant does not have requisite personal knowledge of all required information.

4. Servicer shall have standards for qualifications, training and supervision of employees. Servicer shall train and supervise employees who regularly prepare or execute affidavits, sworn statements or Declarations. Each such employee shall sign a certification that he or she has received the training. Servicer shall oversee the training completion to ensure each required employee properly and timely completes such training. Servicer shall maintain written records confirming that each such employee has completed the training and the subjects covered by the training.

5. Servicer shall review and approve standardized forms of affidavits, standardized forms of sworn statements, and standardized forms of Declarations prepared by or signed by an employee or officer of Servicer, or executed by a third party using a power of attorney on behalf of Servicer, to ensure compliance with applicable law, rules, court procedure, and the terms of this Agreement ("theAgreement").

6. Affidavits, sworn statements and Declarations shall accurately identify the name of the affiant, the entity of which the affiant is an employee, and the affiant's title.

7. Affidavits, sworn statements and Declarations, including their notarization, shall fully comply with all applicable state law requirements.

8. Affidavits, sworn statements and Declarations shall not contain information that is false or unsubstantiated. This requirement shall not preclude Declarations based on information and belief where so stated.

9. Servicer shall assess and ensure that it has an adequate number of employees and that employees have reasonable time to prepare, verify, and execute pleadings, POCs, motions for relief from stay ("MRS"), affidavits, sworn statements and Declarations.

10. Servicer shall not pay volume-based or other incentives to employees or third-party providers or trustees that encourage undue haste or lack of due diligence over quality.

11. Affiants shall be individuals, not entities, and affidavits, sworn statements and Declarations shall be signed by hand signature of the affiant (except for permitted electronic filings). For such documents, except for permitted electronic filings, signature stamps and any other means of electronic or mechanical signature are prohibited.

12. At the time of execution, all information required by a form affidavit, sworn statement or Declaration shall be complete.

13. Affiants shall date their signatures on affidavits, sworn statements or Declarations.

14. Servicer shall maintain records that identify all notarizations of Servicer documents executed by each notary employed by Servicer.

15. Servicer shall not file a POC in a bankruptcy proceeding which, when filed, contained materially inaccurate information. In cases in which such a POC may have been filed, Servicer

shall not rely on such POC and shall (a) in active cases, at Servicer's expense, take appropriate action, consistent with state and federal law and court procedure, to substitute such POC with an amended POC as promptly as reasonably practicable (and, in any event, not more than 30 days) after acquiring actual knowledge of such material inaccuracy and provide appropriate written notice to the borrower or borrower's counsel; and (b) in other cases, at Servicer's expense, take appropriate action after acquiring actual knowledge of such material inaccuracy.

16. Servicer shall not rely on an affidavit of indebtedness or similar affidavit, sworn statement or Declaration filed in a pending prejudgment judicial foreclosure or bankruptcy proceeding which (a)was required to be based on the affiant's review and personal knowledge of its accuracy but was not, (b) was not, when so required, properly notarized, or (c) contained materially inaccurate information in order to obtain a judgment of foreclosure, order of sale, relief from the automatic stay or other relief in bankruptcy. In pending cases in which such affidavits, sworn statements or Declarations may have been filed, Servicer shall, at Servicer's expense, take appropriate action, consistent with state and federal law and court procedure, to substitute such affidavits with new affidavits and provide appropriate written notice to the borrower or borrower's counsel.

17. In pending post-judgment, pre-sale cases in judicial foreclosure proceedings in which an affidavit or sworn statement was filed which was required to be based on the affiant's review and personal knowledge of its accuracy but may not have been, or that may not have, when so required, been properly notarized, and such affidavit or sworn statement has not been re-filed, Servicer, unless prohibited by state or local law or court rule, will provide written notice to borrower at borrower's address of record or borrower's counsel prior to proceeding with a foreclosure sale or eviction proceeding.

18. In all states, Servicer shall send borrowers a statement setting forth facts supporting Servicer's or holder's right to foreclose and containing the information required in paragraphs I.B.6 (items available upon borrower request), I.B.10 (account statement), I.C.2 and I.C.3 (ownership statement), and IV.B.13 (loss mitigation statement) herein. Servicer shall send this statement to the borrower in one or more communications no later than 14 days prior to referral to foreclosure attorney or foreclosure trustee. Servicer shall provide the Monitoring Committee with copies of proposed form statements for review before implementation.

B. Documentation of Note, Holder Status and Chain of Assignment.

1. Servicer shall implement processes to ensure that Servicer or the foreclosing entity has a documented enforceable interest in the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the foreclosure action.

2. Servicer shall include a statement in a pleading, affidavit of indebtedness or similar affidavits in court foreclosure proceedings setting forth the basis for asserting that the foreclosing party has the right to foreclose.

3. Servicer shall set forth the information establishing the party's right to foreclose as set forth in I.C.2 in a communication to be sent to the borrower as indicated in I.A.18.

4. If the original note is lost or otherwise unavailable, Servicer shall comply with applicable law in an attempt to establish ownership ofthe note and the right to enforcement. Servicer shall ensure good faith efforts to obtain or locate a note lost while in the possession of Servicer or Servicer's agent and shall ensure that Servicer and Servicer's agents who are expected to have possession of notes or assignments of mortgage on behalf of Servicer adopt procedures that are designed to provide assurance that the Servicer or Servicer's agent would locate a note or assignment of mortgage if it is in the possession or control of the Servicer or Servicer's agent, as the case may be. In the event that Servicer prepares or causes to be prepared a lost note or lost assignment affidavit with respect to an original note or assignment lost while in Servicer's control, Servicer shall use good faith efforts to obtain or locate the note or assignment in accordance with its procedures. In the affidavit, sworn statement or other filing documenting the lost note or assignment, Servicer shall recite that Servicer has made a good faith effort in accordance with its procedures for locating the lost note or assignment.

5. Servicer shall not intentionally destroy or dispose of original notes that are still in force.

6. Servicer shall ensure that mortgage assignments executed by or on behalf of Servicer are executed with appropriate legal authority, accurately reflective of the completed transaction and properly acknowledged.

II. LOSS MITIGATION.

These requirements are intended to apply to both government-sponsored and proprietary loss mitigation programs and shall apply to subservicers performing loss mitigation services on Servicer's behalf.

A. Loss Mitigation Requirements.

1. Servicer shall be required to notify potentially eligible borrowers of currently available loss mitigation options prior to foreclosure referral. Upon the timely receipt of a complete loan modification application, Servicer shall evaluate borrowers for all available loan modification options for which they are eligible prior to referring a borrower to foreclosure and shall facilitate the submission and review of loss mitigation applications. The foregoing notwithstanding, Servicer shall have no obligation to solicit borrowers who are in bankruptcy.

2. Servicer shall offer and facilitate loan modifications for borrowers rather than initiate foreclosure when such loan modifications for which they are eligible are net present value (NPV) positive and meet other investor, guarantor, insurer and program requirements.

3. Servicer shall allow borrowers enrolled in a trial period plan under prior HAMP guidelines (where borrowers were not pre-qualified) and who made all required trial period payments, but were later denied a permanent modification, the opportunity to reapply for a HAMP or proprietary loan modification using current financial information.

4. Servicer shall promptly send a final modification agreement to borrowers who have enrolled in a trial period plan under current HAMP guidelines (or fully underwritten proprietary modification programs with a trial payment period) and who have made the required number of

timely trial period payments, where the modification is underwritten prior to the trial period and has received any necessary investor, guarantor or insurer approvals. The borrower shall then be converted by Servicer to a permanent modification upon execution of the final modification documents, consistent with applicable program guidelines, absent evidence of fraud.

B. Dual Track Restricted.

1. If a borrower has not already been referred to foreclosure, Servicer shall not refer an eligible borrower's account to foreclosure while the borrower's complete application for any loan modification program is pending if Servicer received (a) a complete loan modification application no later than day 120 of delinquency, or (b) a substantially complete loan modification application (missing only any required documentation of hardship) no later than day 120 of delinquency and Servicer receives any required hardship documentation no later than day 130 of delinquency. Servicer shall not make a referral to foreclosure of an eligible borrower who so provided an application until:
a. Servicer determines (after the automatic review in paragraph IV.G.1) that the borrower is not eligible for a loan modification, or
b. If borrower does not accept an offered foreclosure prevention alternative within 14 days of the evaluation notice, the earlier of (i) such 14 days, and (ii) borrower's decline of the foreclosure prevention offer.

2. If borrower accepts the loan modification resulting from Servicer's evaluation of the complete loan modification application referred to in paragraph IV.B.1 (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days of Servicer's offer of a loan modification, then the Servicer shall delay referral to foreclosure until (a) if the Servicer fails timely to receive the first trial period payment, the last day for timely receiving the first trial period payment, and (b) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

3. If the loan modification requested by a borrower as described in paragraph IV.B.1 is denied, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3, Servicer will not proceed to a foreclosure sale until the later of (if applicable): a. expiration of the 30-day appeal period; and b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii) if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the Servicer fails timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

4. If, after an eligible borrower has been referred to foreclosure, the Servicer receives a complete application from the borrower within 30 days after the Post Referral to Foreclosure Solicitation Letter, then while such loan modification application is pending, Servicer shall not move for foreclosure judgment or order of sale (or, if a motion has already been filed, shall take reasonable steps to avoid a ruling on such motion), or seek a foreclosure sale. If Servicer offers the borrower

a loan modification, Servicer shall not move for judgment or order of sale, (or, if a motion has already been filed, shall take reasonable steps to avoid a ruling on such motion), or seek a foreclosure sale until the earlier of (a) 14 days after the date of the related offer of a loan modification, and (b) the date the borrower declines the loan modification offer. If the borrower accepts the loan modification offer (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days after the date of the related offer of loan modification, Servicer shall continue this delay until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

5. If the loan modification requested by a borrower described in paragraph IV.B.4 is denied, then, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3, Servicer will not proceed to aforeclosure sale until the later of (if applicable):
a. expiration of the 30-day appeal period; and
b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii) if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the failure of the Servicer timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

6. If, after an eligible borrower has been referred to foreclosure, Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter, but more than 37 days before a foreclosure sale is scheduled, then while such loan modification application is pending, Servicer shall not proceed with the foreclosure sale. If Servicer offers a loan modification, then Servicer shall delay the foreclosure sale until the earlier of (i) 14 days after the date of the related offer of loan modification, and (ii) the date the borrower declines the loan modification offer. If the borrower accepts the loan modification offer (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days, Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

7. If the loan modification requested by a borrower described in paragraph IV.B.6 is denied and it is reasonable to believe that more than 90 days remains until a scheduled foreclosure date or the first date on which a sale could reasonably be expected to be scheduled and occur, then, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3.a, Servicer will not proceed to a foreclosure sale until the later of (if applicable):
a. expiration of the 30-day appeal period; and
b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends

borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii) if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the Servicer fails timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

8. If, after an eligible borrower has been referred to foreclosure, Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter, but within 37 to 15 days before a foreclosure sale is scheduled, then Servicer shall conduct an expedited review of the borrower and, if the borrower is extended a loan modification offer, Servicer shall postpone any foreclosure sale until the earlier of (a) 14 days after the date of the related evaluation notice, and (b) the date the borrower declines the loan modification offer. If the borrower timely accepts the loan modification offer (either in writing or by submitting the first trial modification payment), Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

9. If, after an eligible borrower has been referred to foreclosure, the Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter and less than 15 days before a scheduled foreclosure sale, Servicer must notify the borrower before the foreclosure sale date as to Servicer's determination (if its review was completed) or inability to complete its review of the loan modification application. If Servicer makes a loan modification offer to the borrower, then Servicer shall postpone any sale until the earlier of (a) 14 days after the date of the related evaluation notice, and (b) the date the borrower declines the loan modification offer. If the borrower timely accepts a loan modification offer (either in writing or by submitting the first trial modification payment), Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

10. For purposes of this section IV.B, Servicer shall not be responsible for failing to obtain a delay in a ruling on a judgment or failing to delay a foreclosure sale if Servicer made a request for such delay, pursuant to any state or local law, court rule or customary practice, and such request was not approved.

11. Servicer shall not move to judgment or order of sale or proceed with a foreclosure sale under any of the following circumstances:
a. The borrower is in compliance with the terms of a trial loan modification, forbearance, or repayment plan; or
b. A short sale or deed-in-lieu of foreclosure has been approved by all parties (including, for example, first lien investor, junior lien holder and mortgage insurer, as applicable), and proof of funds or financing has been provided to Servicer.

12. If a foreclosure or trustee's sale is continued (rather than cancelled) to provide time to evaluate loss mitigation options, Servicer shall promptly notify borrower in writing of the new date of sale (without delaying any related foreclosure sale).

13. As indicated in paragraph I.A.18, Servicer shall send a statement to the borrower outlining loss mitigation efforts undertaken with respect to the borrower prior to foreclosure referral. If no loss mitigation efforts were offered or undertaken, Servicer shall state whether it contacted or attempted to contact the borrower and, if applicable, why the borrower was ineligible for a loan modification or other loss mitigation options.

14. Servicer shall ensure timely and accurate communication of or access to relevant loss mitigation status and changes in status to its foreclosure attorneys, bankruptcy attorneys and foreclosure trustees and, where applicable, to court-mandated mediators.

C. Single Point of Contact.

1. Servicer shall establish an easily accessible and reliable single point of contact ("SPOC") for each potentially-eligible first lien mortgage borrower so that the borrower has access to an employee of Servicer to obtain information throughout the loss mitigation, loan modification and foreclosure processes.

2. Servicer shall initially identify the SPOC to the borrower promptly after a potentially-eligible borrower requests loss mitigation assistance. Servicer shall provide one or more direct means of communication with the SPOC on loss mitigation-related correspondence with the borrower. Servicer shall promptly provide updated contact information to the borrower if the designated SPOC is reassigned, no longer employed by Servicer, or otherwise not able to act as the primary point of contact.
a. Servicer shall ensure that debtors in bankruptcy are assigned to a SPOC specially trained in bankruptcy issues.

3. The SPOC shall have primary responsibility for:
a. Communicating the options available to the borrower, the actions the borrower must take to be considered for these options and the status of Servicer's evaluation of the borrower for these options;
b. Coordinating receipt of all documents associated with loan modification or loss mitigation activities;
c. Being knowledgeable about the borrower's situation and current status in the delinquency/imminent default resolution process; and
d. Ensuring that a borrower who is not eligible for MHA programs is considered for proprietary or other investor loss mitigation options.

4. The SPOC shall, at a minimum, provide the following services to borrowers:
a. Contact borrower and introduce himself/herself as the borrower's SPOC;
b. Explain programs for which the borrower is eligible;
c. Explain the requirements of the programs for which the borrower is eligible;
d. Explain program documentation requirements;

e. Provide basic information about the status of borrower's account, including pending loan modification applications, other loss mitigation alternatives, and foreclosure activity;
f. Notify borrower of missing documents and provide an address or electronic means for submission of documents by borrower in order to complete the loan modification application;
g. Communicate Servicer's decision regarding loan modification applications and other loss mitigation alternatives to borrower in writing;
h. Assist the borrower in pursuing alternative non-foreclosure options upon denial of a loan modification;
i. If a loan modification is approved, call borrower to explain the program;
j. Provide information regarding credit counseling where necessary;
k. Help to clear for borrower any internal processing requirements; and
l. Have access to individuals with the ability to stop foreclosure proceedings when necessary to comply with the MHA Program or this Agreement.

5. The SPOC shall remain assigned to borrower's account and available to borrower until such time as Servicer determines in good faith that all loss mitigation options have been exhausted, borrower's account becomes current or, in the case of a borrower in bankruptcy, the borrower has exhausted all loss mitigation options for which the borrower is potentially eligible and has applied.

6. Servicer shall ensure that a SPOC can refer and transfer a borrower to an appropriate supervisor upon request of the borrower.

7. Servicer shall ensure that relevant records relating to borrower's account are promptly available to the borrower's SPOC, so that the SPOC can timely, adequately and accurately inform the borrower of the current status of loss mitigation, loan modification, and foreclosure activities.

8. Servicer shall designate one or more management level employees to be the primary contact for the Attorneys General, state financial regulators, the Executive Office of U.S. Trustee, each regional office of the U.S. Trustee, and federal regulators for communication regarding complaints and inquiries from individual borrowers who are in default and/or have applied for loan modifications. Servicer shall provide a written acknowledgment to all such inquiries within 10 business days. Servicer shall provide a substantive written response to all such inquiries within 30 days. Servicer shall provide relevant loan information to borrower and to Attorneys General, state financial regulators, federal regulators, the Executive Office of the U.S. Trustee, and each U.S. Trustee upon written request and if properly authorized. A written complaint filed by a borrower and forwarded by a state attorney general or financial regulatory agency to Servicer shall be deemed to have proper authorization.

9. Servicer shall establish and make available to Chapter 13 trustees a toll-free number staffed by persons trained in bankruptcy to respond to inquiries from Chapter 13 trustees.

D. Proprietary First Lien Loan Modifications.

1. Servicer shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete first lien loan modification application, and key eligibility factors for all proprietary loan modifications.

2. Servicer shall design proprietary first lien loan modification programs that are intended to produce sustainable modifications according to investor guidelines and previous results. Servicer shall design these programs with the intent of providing affordable payments for borrowers needing longer term or permanent assistance.

3. Servicer shall track outcomes and maintain records regarding characteristics and performance of proprietary first lien loan modifications. Servicer shall provide a description of modification waterfalls, eligibility criteria, and modification terms, on a publicly-available website.

4. Servicer shall not charge any application or processing fees for proprietary first lien loan modifications.

E. Proprietary Second Lien Loan Modifications.

1. Servicer shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete second lien modification application.

2. Servicer shall design second lien modification programs with the intent of providing affordable payments for borrowers needing longer term or permanent assistance.

3. Servicer shall not charge any application or processing fees for second lien modifications.

4. When an eligible borrower with a second lien submits all required information for a second lien loan modification and the modification request is denied, Servicer shall promptly send a written non-approval notice to the borrower.

F. Short Sales.

1. Servicer shall make publicly available information on general requirements for the short sale process.

2. Servicer shall consider appropriate monetary incentives to underwater borrowers to facilitate short sale options.

3. Servicer shall develop a cooperative short sale process which allows the borrower the opportunity to engage with Servicer to pursue a short sale evaluation prior to putting home on the market.

4. Servicer shall send written confirmation of the borrower's first request for a short sale to the borrower or his or her agent within 10 business days of receipt of the request and proper written authorization from the borrower allowing Servicer to communicate with the borrower's agent. The confirmation shall include basic information about the short sale process and Servicer's requirements, and will state clearly and conspicuously that the Servicer may demand a deficiency payment if such deficiency claim is permitted by applicable law.

5. Servicer shall send borrower at borrower's address of record or to borrower's agent timely written notice of any missing required documents for consideration of short sale within 30 days of receiving borrower's request for a short sale.

6. Servicer shall review the short sale request submitted by borrower and communicate the disposition of borrower's request no later than 30 days after receipt of all required information and third party consents.

7. If the short sale request is accepted, Servicer shall contemporaneously notify the borrower whether Servicer or investor will demand a deficiency payment or related cash contribution and the approximate amount of that deficiency, if such deficiency obligation is permitted by applicable law. If the short sale request is denied, Servicer shall provide reasons for the denial in the written notice. If Servicer waives a deficiency claim, it shall not sell or transfer such claim to a third-party debt collector or debt buyer for collection.

Dawn Kirby

Dawn Kirby Arnold has been a partner with the firm since 2008. She represents clients in business bankruptcy, business litigation and workouts. Her practice involves extensive experience in real estate and leasing issues in bankruptcy. She has represented corporate debtors, creditors and commercial litigation parties in some of the largest Chapter 11 bankruptcy cases ever filed. She also oversees the firm's consumer bankruptcy practice.

Prior to joining Rattet Pasternak LLP as a partner, Ms. Arnold was a financial restructuring associate at King & Spalding LLP, a real estate litigation associate at Belkin, Burden Wenig & Goldman, LLP, worked in the Real Estate Finance Section of the New York State Attorney General's Office, and served as an intern for the Chief Judge of the Eastern District Bankruptcy Court, the Honorable Conrad B. Duberstein.

Affiliations

- Ms. Arnold is deeply involved in several professional organizations. She is a member of the House of Delegates of the New York State Bar Association (NYSBA), where she also serves on the Committee on Women in the Law. She is a Board Member of the Women's Bar Association of the State of New York (WBASNY) where she formerly co-chaired the Bankruptcy Committee, and now serves as its liaison to the National Conference of Women's Bar Associations (NCWBA). Ms. Arnold is a member of the Executive Committee of the Westchester County Bar Association (WCBA). She is Past President of the Westchester Women's Bar Association (WWBA), where she formerly co-chaired the Bankruptcy Committee. Ms. Arnold is a member of the International Women's Restructuring and Insolvency Confederation (IWIRC), where she is a member of the Planning Committee of the New York Network. She is also an active member of the National Association of Consumer Bankruptcy Attorneys (NACBA).

Speaking Engagements

- Ms. Arnold dedicates significant time to educating others in the profession. She has lectured extensively before professional and business organizations concerning corporate and consumer bankruptcy issues. She is a recognized leader and advocate in the industry.

Education

- Brooklyn Law School, J.D. 1995
- Notre Dame Law School, Law Program for Evidence 1993
- Skidmore College, B.A. 1990

Admissions

- Ms. Arnold is admitted to practice in Connecticut, New York State, the Southern and Eastern Districts of New York, and the U.S. Supreme Court.

Wendy Marie Weathers, Esq. is the Senior Managing Attorney in charge of the Litigation and Consumer Bankruptcy Departments of Cabanillas & Associates, P.C. Ms. Weathers has represented both institutional lenders and borrowers in all aspects of the mortgage banking industry and residential foreclosures for over 16 years. She is admitted to practice in New York since 1997, and is admitted to all four federal and bankruptcy districts in New York and federal district of Connecticut. Ms. Weathers has been published in industry magazines and has held numerous CLE training seminars in foreclosure, bankruptcy, loss mitigation, and post foreclosure sale issues. She earned her B.A. degree from SUNY Stony Brook and her Juris Doctorate from City University of New York School of Law.

Ms. Weathers is deeply involved in several professional organizations. She is a co-chair of the Family Friendly Event Committee of the Women's Bar Association of the State of New York (WBASNY). Ms. Weathers is a co-chair of the Bankruptcy Committee and the chair of the Practice Management Committee of the Westchester Women's Bar Association (WWBA) as well as a Board Member. She is also a co-chair of the Continuing Legal Education Committee of the Westchester County Bar Association (WCBA). Ms. Weathers is a co-chair of the Women in the Law Committee of the Fairfield County Bar Association (FCBA). She is also an active member of the National Association of Consumer Bankruptcy Attorneys, New York State Bar Association and Queens County Bar Association.