

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**NOTICE OF *REVISED* PROPOSED EXPANSION OF
MORTGAGE LOSS MITIGATION PROCEDURE
TO ALL DIVISIONS**

On December 17, 2015, the Bankruptcy Judges requested comments on proposed revisions to the general order that established the mortgage loss mitigation mediation procedure, used in the New Albany Division [General Order 14-0002]. The Judges' intent was to make some formal program for mortgage loss mitigation available in all Divisions.

The proposed revisions generated many comments. The Judges have considered those, and now share this revised proposed general order. (Use of a general order rather than a local rule allows for easier modification, and is the method used by most courts for adoption of such procedures.)

The Judges propose fairly major changes to the process, including making the use of a 'portal' (defined in the document) and a mediator optional. The extent of the changes precluded use of strikeout and redline to illustrate differences from the original order. Attached is a clean version of the proposal.

Because the changes from the original proposal are so significant, the Judges once again invite comments from the bar prior to the order's execution. Comments can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov. Comments are due by 5:00 PM EDT on May 27, 2016.

April 13, 2016

/s/ Kevin P. Dempsey
Bankruptcy Clerk

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

ORDER ESTABLISHING LOSS) GENERAL ORDER 16-_____
MITIGATION PROGRAM)
FOR CHAPTER 13 CASES) Replaces GENERAL ORDER: 14-0002

DRAFT

ORDER ESTABLISHING LOSS MITIGATION PROGRAM
FOR CHAPTER 13 CASES

In an effort to facilitate consensual resolutions between lenders and individual debtors whose residences are at risk of loss, to avoid the costs of litigation, and to facilitate the effective reorganization of the affairs of debtors in bankruptcy, the Court hereby establishes a loss mitigation program available to debtors in chapter 13 cases. This General Order is effective on _____ and supersedes the alternative dispute resolution procedures found in Local Rule B-9019-2, except as noted below. This General Order also replaces General Order 14-0002. The term "Debtor" in this General Order has the meaning assigned by Local Rule B-1000-1(b)(1).

1. A Debtor in a chapter 13 case may request loss mitigation in an effort to obtain a modification of a mortgage encumbering the primary residence.
2. If a Debtor seeks loss mitigation on more than one mortgage, the Debtor shall be required to conclude the loss mitigation of the first mortgage before concluding the loss mitigation on the second or inferior mortgages, unless the mortgage lender holding the first mortgage requires earlier resolution of loss mitigation as to second or inferior mortgages.
3. Before filing a request for loss mitigation, a Debtor shall:
 - a. propose a chapter 13 plan which provides for adequate protection payments to the first mortgage lender, to be made through the trustee conduit;
 - b. have paid the case filing fee in full;
 - c. have prepared the loan modification forms as listed on <https://www.makinghomeaffordable.gov/steps/Pages/step-3-prepare.aspx> ; and

- d. have filed any adversary proceeding seeking to strip a second or subsequent mortgage, if necessary.
4. A request for loss mitigation shall:
 - a. include a notice of the objection deadline set by this General Order;
 - b. if the Debtor proposes to use an online “portal” for document delivery and retention (“Portal”), include the name and other pertinent information about how the mortgage lender can access the Portal, as well as a disclosure of the fees paid or to be paid by the Debtor for use of the Portal;
 - c. be filed not more than ninety days after the Debtor filed the chapter 13 plan (original or amended) as set forth in paragraph 3 above;
 - d. include statements that the requirements of paragraph 3 have been satisfied; and
 - e. include or be followed by a certificate of service on the mortgage lender that complies with Local Rule B-9013-2.
5. If, at the time a Debtor files a request for loss mitigation, no attorney has entered an appearance in the case on behalf of the mortgage lender, the motion shall be served on the mortgage lender pursuant to Fed. R. Bankr. P. 7004.
6. A mortgage lender shall have fourteen days from the date of service of a request for loss mitigation to object. In the absence of an objection, the Court may issue an order granting or denying loss mitigation without conducting a hearing on the motion. If the mortgage lender proposes use of a Portal, or of a Portal other than the one proposed by the Debtor, the mortgage lender shall advise the Debtor by email or letter, and shall be required to pay any fees or costs for use of the Portal that exceed the fees or costs of any Portal designated by the Debtor in the request for loss mitigation. If the Debtor proposes use of a Portal and the mortgage lender does not object to such use and does not propose a different Portal, the mortgage lender shall be bound by the Debtor’s selection.
7. Upon the entry of an order granting loss mitigation, the automatic stay will be modified to the extent necessary to facilitate the loss mitigation process. Specifically, any pending motion for stay relief with respect to property that is subject to loss mitigation pursuant to this order shall be continued pursuant to 11 U.S.C. § 362(e) until after the conclusion of the process. Nevertheless, any mortgage lender may, prior to the conclusion of the process, move for a hearing

on a pending motion for stay relief or move for stay relief based on exigent circumstances set forth in its motion.

8. A mortgage lender who is a party to loss mitigation pursuant to this order shall, within seven days after entry of an order granting loss mitigation, advise the Debtor of the documents required by the mortgage lender to consider a mitigation in addition to the documents in subparagraph 3.c. (If the parties have agreed to the use of a Portal, those documents may be identified by the Portal.)
9. The Debtor shall, within seven days after the identification of the documents required by the lender, provide those documents in the manner prescribed by the mortgage lender.
10. The mortgage lender shall, within fourteen days after the Debtor has submitted all required documentation:
 - a. acknowledge receipt of the information;
 - b. report the mortgage lender's designated counsel for the loss mitigation, if any; and
 - c. notify the Debtor of any incomplete, additional or updated information required to process the application.
11. At any time during the process, the parties may agree to the use of a mediator. The costs of any mediator shall be borne by the parties equally. So long as the parties can agree on a mediator, Court approval of the mediator's fee is not required. If the parties cannot agree on a mediator, then the process for appointment of a mediator set out in Local Rule B- 9019-2 shall be followed.
12. Negotiations pursuant to this order shall commence within sixty days after the entry of an order granting loss mitigation and shall be concluded within one hundred twenty days of the order. At any time, the debtor or the mortgage lender may file an Interim Report with the Court to inform all parties of the status of the process. Any extension of the deadline for concluding loss mitigation may be granted only upon written motion and only for cause.
13. Negotiations shall be conducted via telephone on a conference call established by the Debtor.
14. The Debtor and any co-obligor shall participate in each negotiation session.
15. The Debtor shall, within seven days after the conclusion of loss mitigation pursuant to this order, file with the Court a report of settlement or impasse.

16. The Debtor shall notify the trustee within three days after the conclusion of the loss mitigation process of the terms of any settlement agreement.
17. The Debtor shall, within twenty-one days after the conclusion of negotiations pursuant to this order, file with the court:
 - a. If an agreement is reached, either a motion to approve a loss mitigation agreement or a motion to approve trial modification agreement, which shall provide that all payments to the mortgage lender shall continue to be distributed via the trustee conduit. Any motion shall provide the same information required for a motion to modify a mortgage by Local Rule B-4001-4.
 - b. If no agreement is reached, an amended plan that:
 - (i) conforms to the lender's Proof of Claim (if the lender has filed a Proof of Claim), without limiting the Debtor's right to object to the claim or proceed with a motion to value;
 - (ii) provides that the real property will be surrendered. If the property is surrendered the lender will be entitled to in rem stay relief to pursue available state court remedies against the property (subject to Debtor's right to raise whatever defenses Debtor may have). Notwithstanding the foregoing, lender may file a motion to confirm that the automatic stay is not in effect as to the real property.
18. If either party to the loss mitigation process fails to negotiate in good faith or to appear for a scheduled meeting, it may be held in contempt and made to pay sanctions. A mortgage lender is presumed to act in good faith if it considers the information submitted by a debtor under applicable pre-established guidelines, such as HAMP, the National Mortgage Settlement, HAFA, FHA loss mitigation regulations, and the guidelines and rules of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.
19. If a mortgage lender transfers the loan after an order granting loss mitigation is entered, it must provide a copy of that order to the new holder of the loan, who shall be bound by its terms.
20. If the loss mitigation process has not progressed for more than sixty days, any party may file a motion to terminate loss mitigation and the court shall set a hearing on the motion to terminate, unless the other party to the process files a notice of consent to the termination.

21. If the Court's docket contains no updated information on the loss mitigation process for more than sixty days, the trustee may request a status conference to determine the progress. In response to the request, the mortgage lender or the Debtor may file an Interim Report, and the trustee may then withdraw the status conference request.
22. An attorney for a debtor who seeks loss mitigation under this order shall be entitled to additional compensation as shall be determined by the Court. Counsel for the debtor must seek approval of such compensation by separate application pursuant to Fed. R. Bankr. P. 2016 and Local Rule S.D. Ind. B-2016-1(b)(4).
23. If the mortgage lender chooses to be represented by counsel at the mediation, the mortgage lender may file a notice of post-petition mortgage fees, expenses and charges pursuant to Fed. R. Bankr. P. 3002.1(c) for attorney's fees incurred.
24. All communication and information exchanged during the loss mitigation process shall remain confidential and shall be inadmissible in any subsequent proceeding.

IT IS SO ORDERED.

/s/ _____
Robyn L. Moberly, Chief Judge