

OFFICE OF THE CHAPTER 13 TRUSTEE
CRAIG SHOPNECK, TRUSTEE
For Cases Filed Under Chapter 13 in the United States Bankruptcy Court
Northern District of Ohio – Eastern Division (Cleveland)

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**RECOMMENDED PROCEDURES REGARDING
MORTGAGE LOAN MODIFICATION IN CHAPTER 13 CASES**

DEBTOR'S COUNSEL:

- 1) Obtain a copy of the written Loan Modification Agreement.
- 2) File a Motion for Authority to Modify a Mortgage Loan.
 - a. Include the Loan Modification Agreement signed by debtor as an exhibit. Be certain to redact personally identifiable information such as social security number and loan number.
 - b. The mortgage loan creditor for the current loan and the new loan should be the same. If not, be sure the Motion addresses the history from the original creditor to the new creditor.
 - c. Serve motion on all creditors in the chain of title.
- 3) File Amended Schedules I & J with the proposed new monthly mortgage payment and the current budget.
- 4) A reduction in the debtor's mortgage loan payment may result in additional disposable income available to pay unsecured creditors. As a result, the trustee will likely expect a plan modification.

CREDITOR'S COUNSEL:

- 1) It is preferable that debtor's counsel file the Motion for Authority to Modify a Mortgage Loan. Some circumstances may warrant creditor's counsel filing the motion. If creditor's counsel files the motion, the motion should include documentation, in addition to the Loan Modification Agreement, evidencing debtor's willingness to enter into the loan modification.
- 2) If pre-petition and/or post-petition mortgage loan arrearages are being included in the principal balance of the new loan, the mortgage creditor should not amend or withdraw its arrearage claim(s) because the Motion for Authority to Modify a Mortgage Loan will give direction to the trustee to continue or discontinue payments on the prepetition and/or post-petition mortgage loan arrearages.

- 3) If post-petition mortgage loan arrearages are not being included in the new loan but instead are being paid inside the Chapter 13 plan,

In a conduit plan: the mortgage loan creditor should not file a supplemental proof of claim. The trustee's records already reflect that the debtor's plan payment delinquency has prevented the trustee from making conduit payments and thereby has resulted in post-petition arrearages.

In a non-conduit plan: the mortgage loan creditor should file a supplemental proof of claim indicating the total amount to be paid inside the plan with appropriate itemization of payments, fees and costs.

- 4) **HAMP/HAMF** or other trial period loan modifications lasting a few months:

In a conduit plan, the mortgage loan creditor will need to file a Notice of Mortgage Payment Change at the beginning of the trial period. If a loan modification is not offered at the end of the trial period, the creditor will need to file a second Notice of Mortgage Payment Change to restore the mortgage payment back to the earlier pre-trial period amount.

Alternatively, the creditor and debtor could enter into an Agreed Order outlining the terms of the trial period and directing debtor's counsel to take steps outlined above once the trial period is over and the permanent loan modification terms are offered by the creditor.