



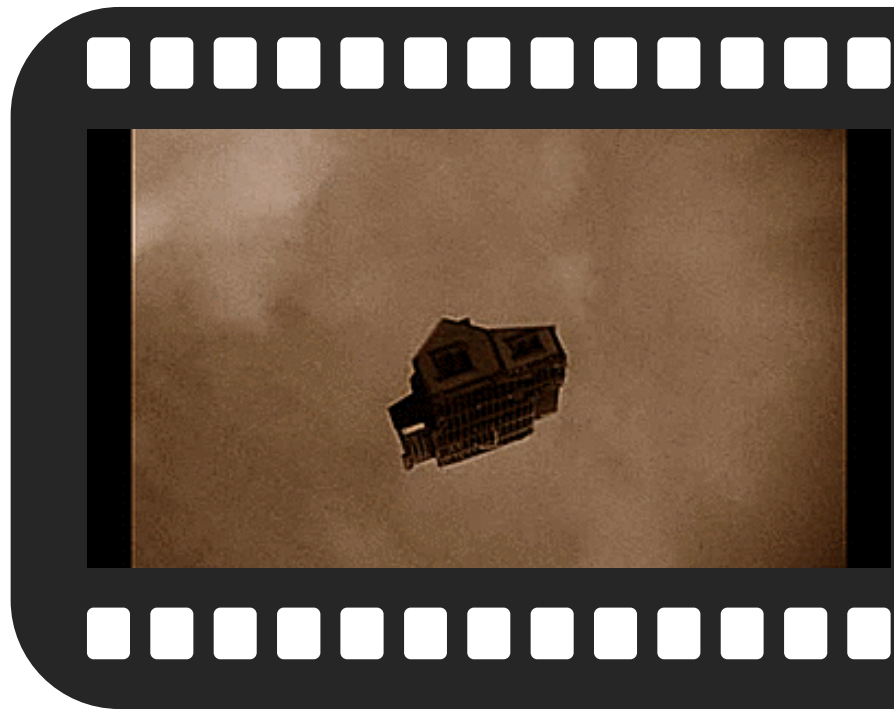
Consumer II: Loan Refinancing

NORTHERN DISTRICT OF TEXAS
BENCH/BAR CONFERENCE
JUNE 2022

Loan Modifications in Bankruptcy

"We're off to see the wizard"

-The Wizard of Oz





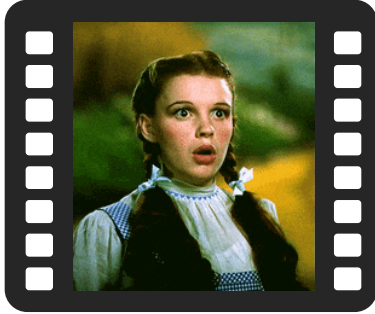
Presented By

An All-Star Cast



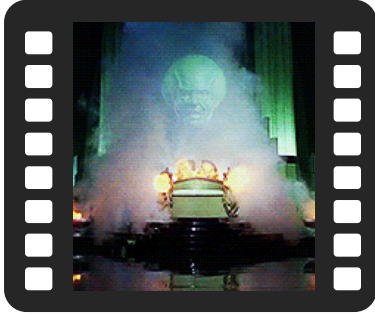
Pam Bassel

Standing Chapter 13 Trustee
Northern District of Texas,
Fort Worth Division



Hilary Bonial

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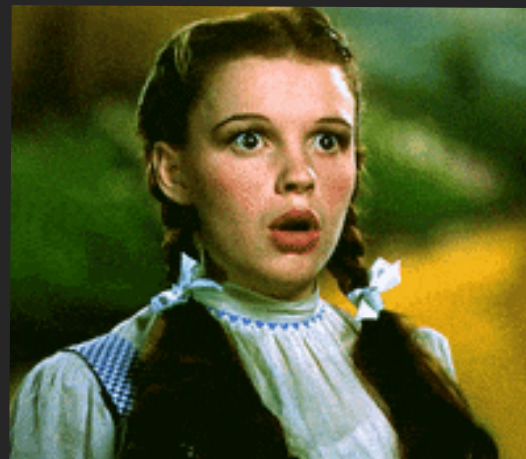
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Loan Modifications

1. Loan Modifications in Bankruptcy
2. FNMA "Flex Modifications"
3. Homeowner Assistance Funds – Texas
4. Partial Claims (FHA Loans)



Hilary Bonial

Managing Director Bonial & Associates, P.C.



Loan Modifications

Loan Modifications in Bankruptcy



- Loan Modifications can be completed in both Chapter 7 and Chapter 13 Bankruptcy cases.
- In Chapter 7's, the modification can occur pre or post discharge
 - The modification CANNOT reimpose personal liability.
- Always include the Debtor's Attorney in communications.
- Court approval is required!



Loan Modifications

Flex Modifications!



- FNMA introduced a post-Covid loan modification product – the FLEX MODIFICATION!
 - Extends the home loan up to 480 months
 - Reduce principal and interest payments by up to 20%
 - *Possibly* lower their interest rate
- This is available FNMA loans only, but other investors will likely develop similar options
- Is it in the best interests of the Debtor?



Loan Modifications

Court Approval



Other Options?



Loan Modifications

Homeowner Assistance Funds



- American Rescue Plan Act provided \$9.9 billion for states to assist homeowners. Funds may be used to pay mortgage payments, utility bills, and homeowner insurance.
- The Texas version is available at:
 - www.texashomeownerassistance.com
- Homeowners in active bankruptcies are eligible to seek assistance.
- Creditors are NOT required to stop the foreclosure process pending approval and disbursement (currently).
- What is the Trustee's interest in the funds?



Loan Modifications

Partial Claims - (FHA Loans)



Partial Claims on FHA Loans

- Standalone Partial Claim: Allows mortgage payment arrearages to be placed in a zero-interest subordinate lien against the property.
- The Partial Claim amount does not require payment until the last mortgage payment is made, the loan is refinanced, or the property is sold, whichever occurs first.
- Combination Loan Modification & Partial Claim: The initial loan is permanently modified extending the term up to 360 months, with the remainder of the arrears are placed in a zero-interest subordinate lien against the property.
- What are the Bankruptcy implications of this?



Outline of the Loan Modification Program

1. Points to Keep in Mind
2. The Basics
3. Information to Include in a Motion to Approve a Loan Modification



Pam Bassel

Standing Chapter 13 Trustee

Northern District of Texas, Fort Worth Division



Outline of the **Loan Modification Program**

Points to Keep in Mind



1. The full version of the program is posted on the Court's website as General Order 2019-01. The mandatory forms can be found under the Forms tab on the Court's website.
2. This is only a basic outline of the program. Please consult the actual General Order for a more detailed description of the rights and responsibilities of all parties.
3. Like every other type of home loan modification, the lender gets to decide whether to modify the loan. This is not a mediation. It is an organized, monitored method to provide the lender with information required to assess the loan modification request and to avoid allegations by the lender that they did or did not receive certain information.



Outline of the Loan Modification Program

The Basics



1. The LMP uses a Portal for the exchange of documents and other information.
2. There are mandatory forms for you to use. They are generally simple to complete.
3. The LMP can be used for any real property owned by the Debtor, including commercial property. It is not just for homesteads.
4. Only the Debtor can commence a modification request. To do this, the Debtor:
 1. registers on the Portal
 2. completes an Initial LMM Package using software available on the Portal
 3. pays required fees to the portal provider
 4. files a mandatory form called “Initial Notice of Loan Modification Matter” and submits a failed stamped copy of the Initial Notice along with a “Certificate of Document Preparation to the Portal.
 5. if Schedules I and J are more than 6 months old, they must be amended and filed OR the Debtor may state in the Initial Notice that Schedules I and J as filed are correct.



Outline of the Loan Modification Program

The Basics (continued)



5. There is an objection period of 14 days from the date the Initial Notice is served. During this period, the lender can file a written objection to participating in the loan modification request. If no objection is filed, the Debtor may proceed with the loan modification request and the lender is bound by the terms of the LMP. If an objection is filed, the Court makes the determination about whether the loan modification request can proceed.
6. There are provisions to add additional parties, if necessary, like a co-owner of the property or a co-obligor.
7. If the loan modification is allowed to proceed, either because no party filed an objection or the court entered an order to that effect, the lender has deadlines to :
 - pay its portion of the required fee, register on the Portal (if not previously registered)
 - provide its most current modification package to the Debtor through the Portal (called the Initial LMM Package)
 - acknowledge receipt of the completed Initial LMM Package from the Debtor
 - request additional documentation from the Debtor if any is required
 - inform the Debtor whether his/her loan modification request is approved or denied or issue a Trial Modification Offer
 - notify a successor lender, if any, of the Debtor's filing of the Initial Notice



Outline of the Loan Modification Program

The Basics (continued)



8. There are provisions covering additional matters, as needed, like conferences, early termination of the loan modification request, trial period payments, approval of the loan modification (including mandatory forms to use), binding the lender to modify the loan if the debtor performs all requirements, waiver of fees if the lender does not disclose those in the modification process, examination of any denial of a loan modification request by an independent party, and consequences of not complying with the requirements of the LMP by any party.
9. The standard fee for the Debtor attorney for representing the Debtor in the LMP is \$2500.00 and there is a list of services the attorney is required to provide.



Outline of the **Loan Modification Program**

Information to Include in a Motion to Approve a Loan Modification (Part 1)



In order to help the Court determine whether a loan mod should be approved and to provide the Trustee with important information regarding disbursements after the loan mod is approved, there is certain information you should include in the motion to approve a loan modification:

	Current Mortgage	Modified Mortgage
Principal		
Interest Rate		
Fixed [yes/no]		
Adjustable [yes/no]		
Term of loan in months		
Date of the last payment		
MONTHLY PAYMENT		
Principal and Interest		
Monthly Escrow		
Total monthly payment		



Outline of the **Loan Modification Program**

Information to Include in a Motion to Approve a Loan Modification (Part 2)



ADDITIONAL INFORMATION:

1. Additional fees, costs, or deposits, if any, charged to the Debtor by the lender or servicer pursuant to the modification agreement, including any attorney fees claimed by the lender or servicer:

AMOUNT \$_____

ITEMIZATION OF SUCH FEES, COSTS, AND DEPOSITS:

The AMOUNT above will be paid:

- by the Debtor in cash OR
- capitalized as part of the loan OR
- disbursed by the Chapter 13 Trustee OR

Describe the method of payment if different from above



Outline of the **Loan Modification Program**

Information to Include in a Motion to Approve a Loan Modification (Part 3)



2. Payments shall be made to the following:

_____ [Name of entity to be paid]
_____ [Payment address]
_____ [Account number]
_____ [Date first payment is due per the modification]

3. Information regarding the treatment of any arrearage - PICK ONE:

_____ If the loan modification is approved, any arrearage provided for in the Chapter 13 Plan is no longer to be paid by the Chapter 13 Trustee, the Debtor, or any other borrower.

OR

_____ The total amount of any arrearage to be paid through the Plan, including amounts ALREADY disbursed by the Chapter 13 Trustee, is \$_____.



Outline of the **Loan Modification Program**

Information to Include in a Motion to Approve a Loan Modification (Part 4)



4. If the Trustee is holding Reserved Funds otherwise payable to the mortgage lender or servicer, the motion should include instructions on how the Trustee is supposed to disburse those funds.

5. Include a list of any additional documents the Debtor will have to sign and any other conditions the Debtor will have to meet to obtain the loan modification.

6. Include a statement regarding whether the modified loan includes a binding arbitration provision or a provision limiting the lender/servicer's liability. If there is a limit on liability, describe what that is.

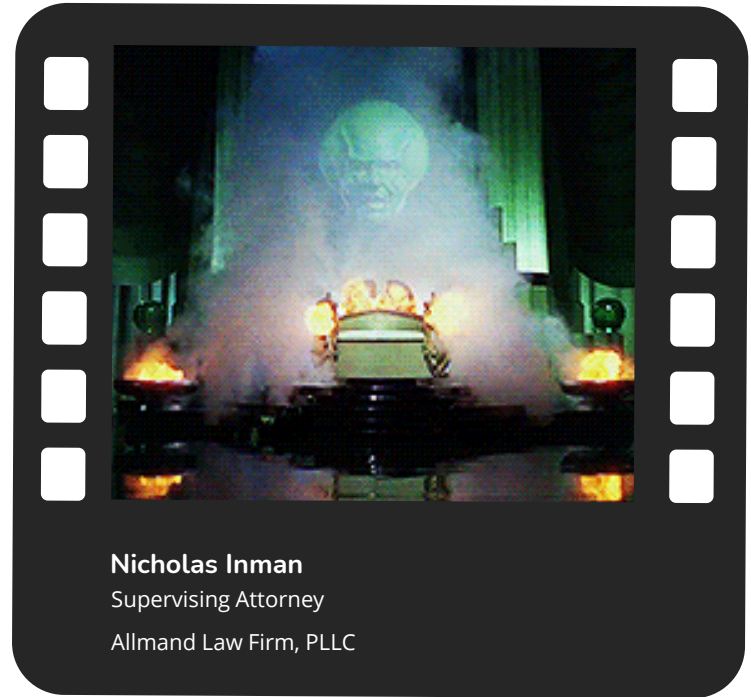
7. The property address and the names of all the obligors on the modified loan.

[NOTE – IF YOU ARE NOT USING THE LOAN MODIFICATION PROGRAM, YOU WILL NEED TO MODIFY THE PLAN TO MAKE CHANGES IN THE DISBURSEMENTS TO BE MADE BY THE TRUSTEE]



Plan Modifications and Options

1. An Attorney's Perspective





Thank You For Watching

