

PROPOSED LOAN MODIFICATION PROGRAM

By Pam Bassel
Standing Chapter 13 Trustee for the Northern
District of Texas, Fort Worth
Division

The Bankruptcy Law Section of the State Bar of Texas established a Committee to develop a loan modification program suitable for implementation throughout the state, inspired by programs in many other jurisdictions like the Middle District of Florida, the Central District of California, and the District of Arizona. These programs have successfully helped debtors get loan modifications, particularly on their homes.

I have the privilege of chairing the Committee. Our Committee members include representatives of mortgage lenders, debtor counsel, and two other Texas Chapter 13 Trustees, Debbie Langehenning and Tim Truman. The members of the Committee have worked very hard and devoted long hours to developing a proposed program for implementation throughout the state and a set of mandatory forms for use in that program. These documents were circulated to all the Chapter 13 Trustees in Texas and to our Bankruptcy Judges.

The proposed program takes advantage of technology that has advanced since the first programs like this were established. The goal is to make the loan modification process as efficient and streamlined as possible. The completion of required documents, the exchange of documents and information, and requests of the parties for additional information are all handled through a portal. The proposed program was drafted to work in either a conduit or non-conduit case and to provide the Chapter 13 Trustee with the information he/she would need to make correct disbursements to mortgage lenders, whether the loan is modified or not.

The following is a short outline describing how the proposed program is designed to work. The titles of the proposed mandatory forms are italicized. Every provision in the proposed program is subject to the Court ordering otherwise in a particular case.

1. Any Chapter 13 debtor, including those in cases filed prior to the adoption of the program, may request to enter the program. It is available for all real property in which the debtor has an interest, not just homestead.

2. The debtor requests to enter the program by filing an *Initial Notice of Loan Modification Matter*. That is served on the matrix and there is an objection period. If no party objects, the loan modification request proceeds without the entry of a court order. If there is an objection, the court determines whether the matter will proceed.

3. The responsibilities and duties of the various parties are set out in detail. There are deadlines for the initial submission of documents and information by the debtor and a deadline by which the lender may request additional documents and information as well as a deadline by which the lender must make a decision on the loan modification request.

4. To avoid any delay in plan confirmation, the debtor can propose a plan that requires the debtor to continue making the regular monthly mortgage payment, but allowing the debtor to defer any arrearage cure.

5. The lender reviews the debtor's submission, asks for additional information if needed, and announces its decision regarding the loan modification, all on the portal. The lender may deny the requested modification outright, approve it, or require trial payments. In the event the lender requires trial payments, the parties will file a *Notice of Trial Period Payments*. The Notice will also contain a disclosure of any other terms and conditions required by the lender. There is an opportunity for other parties to object to that Notice. Assuming, however, that there is no objection:

(A) The Trustee will make the trial payments in a conduit program. There is a provision in the proposed program that if the debtor is current on plan payments or the payments due pursuant to a wage directive, any payment that the Trustee is directed to disburse to the lender is deemed current, even if not yet disbursed by the Trustee to the lender. [See paragraph 16(I)] This should avoid problems arising because of the timing of Trustee disbursements. There is also a provision that the Trustee will reserve the difference between the trial payments and the regular mortgage payments during the trial period. What happens to those reserved funds is described below, but the plan payment will not change during the trial period, even if the trial payments to the lender are lower than the regular mortgage payment, as is usually the case.

(B) The debtor will make the trial payments in a non-conduit jurisdiction.

If someone objects to the trial payments, the court can determine whether the debtor will be allowed to make the trial payments. If the court approves those payments, it will enter an *Order Approving Trial Period Payments*. An order is entered only if an objection is filed. Otherwise, the process is automatic.

6. At the conclusion of the trial period, assuming the debtor has made the trial payments and is in compliance with any other terms and conditions required by the lender as set out in the *Notice of Trial Period Payments*, the debtor is entitled to a loan modification. Either the debtor or the lender can file a *Motion to Approve Loan Modification Agreement*.

(A) The Motion to Approve is based on the model developed by the mortgage sub-committee of the National Association of Chapter 13 Trustees ("NACTT") to get loan modifications approved. The Committee believes that the mandatory form contains all of the information the Trustee will need to make or to discontinue making disbursements, such as the payment of an arrearage, if the loan modification is approved.

(B) If the Motion to Approve is granted, the court will enter an *Order Approving Loan Modification Agreement*.

(C) No plan modification is required for the loan modification to be approved. There are provisions in the program regarding when a plan modification is required, but it is not part of the process of having the court approve the loan modification.

(D) If the loan modification is approved, the information and the disclosures contained in the *Motion to Approve Loan Modification Agreement* will be deemed to be an amendment of the lender's proof of claim and a timely filing of a Notice of Payment Change and/or a Notice of Fees, Expenses, and Charges pursuant to Rule 3002.1.

(E) If the loan modification is approved by the Court, the conduit Trustee will be authorized to make the disbursements set out in the *Motion to Approve Loan Modification Agreement* and to disburse the reserved funds (the difference between the trial payments and the regular monthly mortgage payments) to the debtor's counsel toward their fees.

7. If the lender denies the loan modification request, the conduit Trustee will be authorized to disburse the reserved funds to the lender. This is also true if the court denies the loan modification. In that case, the court will enter a *Order Denying Approval of Loan Modification Agreement*. This reservation of the funds prevents the debtor from falling further behind to the lender as a result of the trial period.

8. There is a provision in the program regarding the proposed no-look fee to compensate debtor counsel for representing their client in the Loan Modification Program.

The mortgage lender representatives have been enthusiastic about the development of a uniform program for Texas. Performing loans are a win for the lender and for the debtor. Standardization of the process throughout Texas allows lenders to train staff to handle the loan modification requests much more efficiently. It also encourages lenders to participate in the proposed program which is crucial to the program's success.

The Committee members have worked carefully to present a program that meets the needs of the debtors and the lenders and that does not create a burden on the court. Hopefully, the program will be implemented in all four districts in Texas.

