

Guidelines re: Residential Loan Modifications on Relief From Stay Motions and in Chapter 11 and Chapter 13 Plans

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

**GUIDELINES REGARDING RESIDENTIAL LOAN
MODIFICATIONS ON RELIEF FROM STAY MOTIONS
AND IN CHAPTER 11 AND CHAPTER 13 PLANS**

(San Francisco and San Jose Divisions)

Introduction

The court has numerous Chapter 11 and 13 cases in which creditors holding first lien mortgage loans secured by borrower-occupied principal residences file motions for relief from stay and/or debtors have filed or will file applications to modify the terms of such home mortgage loans. Debtors in Chapter 7 frequently appeal to the court for extension of the automatic stay while they seek loan modifications without appreciating that the court can afford them little relief if the trustee does not oppose relief from stay.

The following are guidelines that are applicable to creditors filing such motions for relief from stay and for debtors who hope to modify their principal residence first lien mortgage loans by agreement with their first lien mortgage lender. They do not apply to non-consensual modifications of secured creditors' liens.

NOTE: CREDITORS ARE NOT VIOLATING THE AUTOMATIC STAY WHEN THEY ARE NEGOTIATING LOAN MODIFICATIONS WITH DEBTORS IN BANKRUPTCY. Motions for Relief from Stay (Chapter 11 or 13)

1. Creditors must state on the cover sheet accompanying their motion whether or not debtor(s) have requested a loan modification prior to bankruptcy and/or prior to the date the motion is filed.
2. If debtor(s) have made such a request, the creditor must also indicate on the cover sheet the status of the request (e.g. request pending, no decision yet; modification in trial period; denied in writing (attaching a copy of the denial), etc.).
3. If debtor(s) have not made a request for a loan modification prior to the date of filing the motion for relief from stay, but intend to do so, or have done so after that date and the creditor has not so indicated in its motion for relief from stay, then they should advise the court accordingly at the hearing on the motion for relief from stay. As one form of adequate protection, the court may set a deadline for the debtor(s) to file and serve on the creditor (and in Chapter 13, on the trustee) a declaration stating under penalty of perjury: (1) the date of such a request and to whom it was sent (attaching a true copy of any transmittal letter or cover sheet, without exhibits); (2) if known, the status of the request (e.g., request pending but no decision yet; modification in trial period; denied in writing, etc.); and (3) the amount that is 31% of the debtor(s)' monthly gross income as

shown on Schedule I.

4. As additional adequate protection of the creditor's interest in the debtor(s)' principal residence pending consideration of the loan modification request by the creditor, the court will set an appropriate monthly payment amount, and in doing so may consider as adequate a monthly amount that is 31% of the debtor(s)' monthly gross income, with payments beginning in the month that follows the first hearing on the motion for relief from stay or at the end of the contractual grace period in the month that follows after the motion was filed.

5. The court's adequate protection order will normally provide that if the creditor in its sole discretion denies the loan modification request in writing provided to debtor(s) and counsel, if any, either (1) the adequate protection payments will revert to the amount provided in the loan documents in the next calendar month after the denial or (2) the creditor will be permitted to restore the matter to calendar on ten (10) days notice.

Motions for Relief from Stay (Chapter 7)

6. Chapter 7 does not provide a debtor rights greater than those available under non-bankruptcy law to cure a default on secured debt or otherwise to modify the terms of secured debt. Chapter 7 offers debtor only a discharge of unsecured debt. Accordingly, the court will almost always grant relief from stay to the holder of secured debt in a chapter 7 case unless the trustee objects on some basis, such as that the collateral should be sold by trustee for the benefit of all creditors. Because Chapter 7 does not permit the debtor to alter the terms of secured debt without the consent of the lender, and because none of the loan modification programs currently in effect give the debtor any legal right to have a loan modified, the court will normally not deny or delay relief from stay in a chapter 7 case on the basis that a loan modification application is pending.

Chapter 11 and 13 Plans

7. If the debtor(s)' Chapter 13 plan is premised upon a modification of a first mortgage loan secured by the principal residence, no later than the §341 meeting of creditors debtor(s) must file and serve on the Chapter 13 trustee a declaration stating under penalty of perjury: (1) the date of such a request, to whom it was sent (attaching a true copy of any transmittal letter or cover sheet, without exhibits); (2) if known, the status of the request (e.g., request pending but no decision yet; modification in trial period; denied in writing, etc.); and (3) the present (unmodified) balances and total monthly payments on all claims secured by the debtor(s)' principal residence.

8. For a Chapter 11 plan premised upon a modification of a first mortgage loan secured by the debtor(s)' principal residence, the same information required in ¶ 7 for a Chapter 13 case should be included in the debtor(s)' disclosure statement.

9. No plan referred to in ¶¶ 7 and 8 that proposes the loan modification payment terms for treatment of the first lien mortgage creditor's claim will be confirmed until the modification has been approved by the first mortgage lender, with proof of such approval

provided to the Chapter 13 trustee, where applicable, or to the court in a Chapter 11 case.

10. Notwithstanding paragraph 9, the court may confirm a plan while a loan modification request is pending, if the language of the plan provides clearly that plan payment terms in conformity with a not-yet-approved loan modification request shall by the terms of the plan itself revert to the terms provided in the operative loan documents if the loan modification request is denied. If a loan modification request remains pending when all other plan payments have been made, the case may be closed without a discharge.

While many loan modifications are under the Home Affordable Modification Program (HAMP), these guidelines apply to any program available to debtors seeking relief on their first lien mortgage loans. Under HAMP, eligible loans must have been originated prior to January 1, 2009, on which the unpaid principal balances do not exceed \$729,750 for a single unit dwelling, \$934,200 for 2 units, \$1,129,250 for 3 units, and \$1,403,400 for 4 units.

**SF & SJ Loan Modification
Guidelines - Effective
December 1, 2010**