HIGHLIGHTS OF THE LOAN MODIFICATION PROGRAM

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Presented by:

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HISTORY

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.

The Committee members included representatives of mortgage lenders, debtor counsel, and three Texas Chapter 13 Trustees, Pam Bassel, Debbie Langehenning and Tim Truman. The members of the Committee worked 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 in April, 2018. Once the Trustees had a chance to comment, the program was circulated to all the Texas judges. The program was adopted in the Northern District of Texas and became effective on October 1, 2018.

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.

HIGHLIGHTS

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 and enters an order.

3. The responsibilities and duties of the various parties are set out in detail. There are (a)

deadlines for the initial submission of documents and information by the debtor, (b) a deadline by which the lender may request additional documents and information, and (c) 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. 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*. There are several points to draw your attention to about this Motion to Approve:

(A) It 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.

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