

Presented:

9th Annual Consumer Bankruptcy Practice

August 8-9, 2013
Galveston, Texas

**Legitimate and Illegitimate Approaches to Home Loan
Modification and Loan Forgiveness**

**Gary J. Campbell
Shawn I. Carter
Janna Countryman**

Loan Mods

- When a debtor attempts to enter into a loan modification agreement with his/her mortgage lien holder, we do not object because they are in the best interest of everyone.
- If a Motion to Approve a Loan Modification Agreement is filed and granted before the TRCC is prepared/filed, we will reference it in our TRCC.
- When a Motion to Approve a Loan Modification Agreement is filed post TRCC, we will monitor the claim. Once we receive the order granting the application or we receive returned funds, we will place a reserve on the claim.
 - For returned funds, we also make a note in the system and send a letter requesting the creditor to amend their POC down to the principal amount we have already paid.
 - If the amount still remaining to be paid on the claim is $\geq \$2,000$, we will follow up on this request to amend the POC in 30-45 calendar days.
 - If the POC is not amended within this time frame, we will file a motion to modify to remove the creditor from the plan.
 - If the amount still remaining to be paid on the claim is $< \$2,000$, we will keep the reserve on the claim until the completion of the plan and forward the funds to the court registry.

Loan mod - PRE-TRCC

EXAMPLE 1

- The debtor's attorney referenced the loan modification in the plan. BOA was scheduled to be paid directly by debtor.
- The plan was confirmed.
- Two months prior to the filing of the TRCC, the debtor's attorney filed a motion for approval to enter into a loan mod with the court.
 - The motion stated that the debtor has a mortgage with Bank of America ("BOA") and owe arrears, BOA filed a proof of claim ("POC") in the amount of \$9,000 for such arrears, the parties agreed to modify the loan pending court approval, and the modification would allow successful completion of the bankruptcy plan.
- The Court granted the permission to enter into the loan modification agreement.
- The TRCC was filed referencing the loan modification agreement.

EXAMPLE 2

- Prior to confirmation, the debtor's attorney filed a motion for approval of a loan modification agreement between JPMorgan Chase and the debtors.
- In the Order Confirming the Plan JPMorgan Chase was scheduled to receive arrearage payments through the plan.
- Disbursements to JPMorgan Chase began. Thereafter, the Court granted approval for the loan modification.
- JPMorgan Chase amended its POC to zero.
- A money back request letter was sent to JPMorgan Chase.
- The TRCC was filed referencing the loan modification approval and that the claim was amended to zero.

Also available as part of the eCourse

[Consumer Bankruptcy Hot Topics: Rule 3002.1 Interpretations and Actions; Home Loan Modifications and Loan Forgiveness; Reaffirmation Agreements; and the Collision of Family Law and Bankruptcy](#)

First appeared as part of the conference materials for the
9th Annual Consumer Bankruptcy Practice session

"Legitimate and Illegitimate Approaches to Home Loan Modification and Loan Forgiveness"