

Still Underwater in 2013? Chapter 13 Real Estate Issues in the Post-Mortgage-Crisis World

Melissa A. Youngman, Moderator

McCalla Raymer, LLC; Orlando, Fla.

Hon. Wendy L. Hagenau

U.S. Bankruptcy Court (N.D. Ga.); Atlanta

Jeanne A. Kraft

Wolff, Hill, McFarlin & Herron, PA; Orlando, Fla.



AMERICAN
BANKRUPTCY
INSTITUTE

DISCOVER



**interactive
code&rules**

law.abi.org

Start Your Research Here






***Your Interactive Tool
Wherever You Go!***

With ABI's Code & Rules:

- **Search for a specific provision of the Bankruptcy Code and related Rules**
- **Access links to relevant case law by section (provided by site partner, LexisNexis®)**
- **Retrieve a Code section or case summary – even on your mobile device**
- **Personalize it with bookmarks and notes**
- **Receive it FREE as an ABI member**

Current, Personalized, Portable
law.abi.org

44 Canal Center Plaza • Suite 400 • Alexandria, VA 22314-1546 • phone: 703.739.0800 • abi.org

Join our networks to expand yours:   

© 2013 American Bankruptcy Institute All Rights Reserved.



Still Underwater in 2013?
Chapter 13 Real Estate Issues
in the Post-Mortgage-Crisis World

Presented By: Hon. Wendy L. Hagenau; Jeanne A. Kraft; and Melissa A. Youngman

National Mortgage Servicer Settlement &
the New National Mortgage Servicing Standards

- ◆ New NMSS are result of National Mortgage Servicer Settlement and AGs of 49 States, entered into Feb. 9, 2012
- ◆ Affected Mortgage Servicers:
 - ◆ Bank of America
 - ◆ JPMorgan Chase Bank, N.A.
 - ◆ Wells Fargo Bank, N.A.
 - ◆ Citibank
 - ◆ Ally/GMAC
- ◆ Settlement Term Sheets are attached as Exhibit A to each of the 5 consent judgements
- ◆ No right of Private Enforcement:
 - ◆ AG can bring enforcement action & seek sanctions for non-compliance in District Court for D.C.

National Mortgage Servicer Settlement & the New National Mortgage Servicing Standards

- ◆ General Requirements
 - ◆ Pleadings, affidavits and defaults
 - ◆ must be "accurate and complete" and
 - ◆ "based on competent and reliable evidence"
 - ◆ Affidavits, Sworn Statements and Declarations
 - ◆ comply with state law notarization requirements
 - ◆ based on personal knowledge or review of business records kept in compliance with evidentiary rules
 - ◆ if affiant is relying on review of business records, a copy of the records must be attached, if required by law/court rules
 - ◆ cannot contain false or inaccurate information
 - ◆ must identify affiant by name, employer and title
 - ◆ affiant must be an individual
 - ◆ signature must be hand, and must be dated
 - ◆ all information required by form affidavits shall be complete and filled in at the time of signing

National Mortgage Servicer Settlement & the New National Mortgage Servicing Standards

- ◆ Proof of Claim Requirements
 - ◆ Factual assertions must be accurate, complete, and supported by competent and reliable evidence
 - ◆ "Loan Documents" must be attached to POC
 - ◆ Copy of note, including endorsements or allonge
 - ◆ Lost Note affidavit if the note is lost or destroyed
 - ◆ Copy of recorded mortgage/deed of trust/security instrument with evidence of recordation in applicable land records
 - ◆ Copies of any AOMs as required by applicable state law
 - ◆ Must include statement in POC setting forth the basis that the applicable party has the "right to foreclose" (i.e. "RTF language")
 - ◆ Servicer must attach Mortgage Claim Attachment A and comply with Rule 3001 and 3002.1
 - ◆ Settlement includes sanctions for failure to comply with 3002.1
 - ◆ If servicer fails to file Notice of Payment Changes under 3002.1, Servicer shall waive and not collect any late charges, or other fees charged solely as a result of the debtor's failure to timely make the changed payment
 - ◆ If servicer fails to timely file Notice of Post-Petition Fees and Costs under 3002.1, they are deemed waived and may not be collected, unless they are "independent charges" that have been specifically authorized by the debtor or have been advanced to taxes, homeowner's association fees, liens or insurance
 - ◆ If servicer filed any pending POC or MFR with inaccurate material information in any bankruptcy case prior to the effective date of the NMSS, servicer may not rely on it, and must file an amended POC or MFR within 30 days of the acquiring knowledge of the inaccuracy

National Mortgage Servicer Settlement & the New National Mortgage Servicing Standards

- ◆ Requirements for Motions for Relief ("MFR")
 - ◆ If not previously submitted with the POC, servicer must attach copy of loan docs to MFR, and include RTF language
 - ◆ If such documents were previously submitted, must include statement to that effect
 - ◆ Must disclose the terms of any trial or permanent loan modification pending at the time of filing of the MFR
 - ◆ Must disclose if the debtor is being evaluated for any loss mitigation option at the time of filing
 - ◆ Must attach an affidavit, sworn or sworn statement setting forth
 - ◆ whether there has been a default in the payment of any pre-petition or post-petition amounts due from the debtor
 - ◆ description of the default and itemization of the pre- and post-petition arrearage, including the amount, date, and description of the charge
 - ◆ all amounts claimed, including a statement of the amount to cure any default on or near the date of the MFR

National Mortgage Servicer Settlement & the New National Mortgage Servicing Standards

- ◆ Payment Application in Chapter 13 Cases
 - ◆ Must ensure prompt and proper application of pre-petition arrearage and post-petition payments
 - ◆ Debtor is to be treated as current so long as the debtor is making payments in accordance with the confirmed plan and any subsequent payment changes that are filed in the case
 - ◆ Upon dismissal of the bankruptcy, the granting of stay relief, or upon entry of the debtor's discharge, servicer is required to update and reconcile its records to reflect payments during the case and the waiver of any fees, expenses or charges as required under the settlement

Surrendered Property

- ◆ Can a secured creditor be compelled to foreclose on surrendered property?
- ◆ Several courts have said no. See *In re Brown*, 477 B.R. 916 (Bankr. S.D.Ga. 2012); *In re Service*, 155 B.R. 512 (Bankr. E.D. Mo. 1993); *In re White*, 282 B.R. 418 (Bankr. N.D. Ohio 2002)
- ◆ Other Options: Within Bankruptcy Proceeding
 - ◆ Sale of Property pursuant to 11 U.S.C. 363(b)
 - ◆ Sale of Property pursuant to 11 U.S.C. 363(f)
- ◆ Other Options: Outside of Bankruptcy Proceeding
 - ◆ Deed in Lieu
 - ◆ Consent to Foreclosure Judgment and Reschedule Sale

National Chapter 13 Plan

- ◆ Chapter 13 Form Plan Working Group for the Advisory Committee on Bankruptcy Rules published the proposed form and Rule changes for comment in January 2013
- ◆ Judge Eugene R. Wedoff is the head of the Committee, and the Committee consists of 17 representatives of servicers, debtors, judges, trustees and clerks.
- ◆ Changes are not likely to go into effect until 2014
- ◆ Draft Rule 3015(c) will require use of Official Form for National Plan in all Chapter 13 cases
- ◆ Draft Rule 9009 will limit modification of certain Official Forms, including National Plan Form
- ◆ Draft Rule 3015(d) will change notice and service requirements of plan
- ◆ Enhanced service & notice requirements means more can be accomplished through the plan
- ◆ The proposed Rule changes are meant to confirm that the plan, not the POC controls

National Chapter 13 Plan

- ◆ Significant Rule changes include
 - ◆ Validity, amount and treatment of a claim will be controlled by the debtor's plan as opposed to the POC. Specifically, Draft Rule 3012, together with Draft Rule 3015(g), provide that the plan may make a binding determination of the amount of a secured claim, as well as to the amount of a claim entitled to priority treatment, subject to ultimate resolution at the confirmation hearing
 - ◆ Creditor's lien may be stripped or crammed down through the plan, without the filing of any additional pleadings by the debtor - Draft Rules 4003(d) and 7001
 - ◆ Creditor's claim may be objected to through the plan, without the filing of a separate pleading by the debtor - Draft Rules 3012 and 3015(g)
 - ◆ Deadline to file POC will be reduced to 60 days from petition date, as opposed to 90 days after the date of the first scheduled 341 meeting of creditors (this is a decrease of the bar date by more than 90 days and is meant to insure that the POC will be filed prior to the first confirmation hearing) - Draft Rule 3002(c)
 - ◆ Secured creditors will be required to file a POC rather than relying on their lien for future satisfaction and riding out the chapter 13 process unless claim is resolved under Draft Rule 3012 process - Draft Rule 3002(a)
 - ◆ Enhanced Notice and Service requirements - creditors must be served in accordance with Rule 7004 in some instances - Draft Rules 3015(d)
 - ◆ Creditors must file and serve objection to confirmation 7 days prior to confirmation hearing - Draft Rule 3015(f)

Update on POC Rule Changes

- ◆ Overview of Recent Cases
 - ◆ In re Owens, 2013 WL 49805 (Bankr. M.D.AL. Jan. 3, 2013) – Court disallowed creditor's claim for recovery of a payday loan where creditor failed to provide the supporting documentation necessary for its claim. Once the Debtor called into question whether the Creditor had provided sufficient documentation to support its claim, under 11 U.S.C. §502(b), Creditor had burden to show that it did. Creditor failed to do so, and the Court disallowed its claim.
 - ◆ In re Crutchfield, 2013 WL 1812225, (Bankr. M.D.GA. Apr. 26, 2013) – Chapter 13 Debtor filed objections to seven proof of claims filed by credit card companies, pursuant to 11 U.S.C. §502(b)(1), because no assignments were attached to the claims. The proof of claims were all filed prior to the effective date of the amendments to Bankruptcy Rule 3001. The Bankruptcy Court held that under the prior version of Rule 3001, assignees of credit card claims were required to include copies of the assignments in order to establish prima facie evidence of the validity of their claim. However, the Court noted that under the amended version of the Rule, "the same assignees merely need to provide a summary of specific data that is calculated to provide the debtor with enough information to match the claim with the debt." Because the claim objections were "then pending" on the effective date of the amendments to Rule 3001, and because the amended rule "promotes the goals of an efficient claims allowance process that minimizes economic burdens on the creditor, without in any way limiting the debtor's ability to challenge a claim for any substantive basis," the Bankruptcy Court concluded that Amended Rule 3001 applied in this case. The Court overruled the Debtor's objections, explaining that each of the proof of claims constituted prima facie evidence of the validity and amount of the claims pursuant to amended Rule 3001, which the Debtor failed to adequately refute.

Update on POC Rule Changes

- ◆ In re Porco, 2013 WL 1283378 (Bankr. M.D.FL. Mar. 28, 2013) – Court disallowed amendment to Creditor’s proof of claim to convert its second mortgage claim from a secured claim to a wholly unsecured claim, where the Creditor waited six months after the foreclosure sale of its collateral to file the amended claim, and where the amended claim did not cure a defect in its initial claim.
- ◆ In re Castleberry Rattler, 2013 WL 828286 (Bankr. S.D.AL. Mar. 6, 2013) – Creditor obtained stay relief and filed an administrative claim for unpaid post-petition residential rents due under a lease entered into post-petition, pursuant to 11 U.S.C. §503(b)(1)(A). Bankruptcy Court held that Section 1305(a)(2) of the Bankruptcy Code did not preclude Creditor from seeking an administrative claim under Section 503(b)(1)(A), and that administrative claim was warranted for the following reasons: (i) the post-petition lease provided a “demonstrable benefit” to the Debtor’s bankruptcy estate, because “in order to work and fund the plan, it was necessary for the Debtor to have some place to live,” (ii) Creditor filed a motion for relief from stay and obtained a stay relief order that stated that any unpaid rent would be an administrative claim, and (iii) the Debtor did not object to entry of the final order on the stay relief motion.
- ◆ In re Cloud, 2013 WL 441543 (Bankr. S.D.GA., Jan. 13, 2013) – Failure to appear at hearing resulted in Order striking Creditor’s Notice of Post-Petition Fees and Costs.

Update on POC Rule Changes

- ◆ Under what circumstances should Supplements for Payment Changes and Post-Petition Fees and Costs be filed?
 - ◆ How does surrender affect the Rule?
 - ◆ How does stay relief affect the Rule?
- ◆ Local Rules/Practice Adjustments since implementation of Rules

Conversion Issues

- ◆ Overview of Conversion from 13 to Chapter 7
 - ◆ Generally, chapter 13 debtor may convert to chapter 7 at any time
 - ◆ Conversion of the case constitutes order for relief under chapter 7, but does not change / affect petition date
 - ◆ Claim arising after order for relief, but prior to conversion shall be treated as arising immediately prior to the petition date, except with respect to administrative claims under 503(b)

Conversion Issues

- ◆ Valuations and Secure Interests after Conversion to Chapter 7 from a Chapter 13
 - ◆ 11 U.S.C. 348(f)(1) provides that valuations of property and allowed secured claims in a Chapter 13 case shall not apply in the converted Chapter 7 case
 - ◆ Any creditor holding a security as of the petition date shall continue to be secured by that security unless the full amount of such claim determined under applicable non-bankruptcy law has been paid in full as of the conversion, notwithstanding any valuation or determination of the amount of the allowed secured claim under 348(f)(C)(i)

Case Update

- ◆ In re McNeal, 477 Fed. Appx. 562 (11th Cir. 2012)
- ◆ Bank of America, N.A. v. David Sinkfield (In re Sinkfield) - Case No. 13-cv-1241
- ◆ In re Malone - Case No. 13-90013

◆ Any Questions?

SURRENDER OF REAL PROPERTY IN CHAPTER 13

By: Jeanne A. Kraft

A Chapter 13 debtor decides to surrender real property. He files a plan with a provision surrendering the real property to the secured creditor in full satisfaction of the claim. Secured creditor obtains relief from the automatic stay and proceeds with *in rem* remedies under state law, obtaining title to the real property. End of story, right? Well, not always. For a variety of reasons, creditors do not take any action with respect to their security interest, even though a plan surrenders the real property to the creditor in accordance with 11 USC §1325(5)(C). Several courts have determined that a secured creditor cannot be compelled to take affirmative steps to accept property surrendered by the debtor. *See In re Brown*, 477 B.R. 916 (Bankr. S.D. Ga. 2012); *In re Service*, 155 B.R. 512 (Bankr. E.D. Mo. 1993); *In re White*, 282 B.R. 418 (Bankr. N.D. Ohio 2002). As a result, the debtor remains record owner of the real property under state law and incurs post-petition debts associated with the real property, such as local government fines, carrying costs and association fees. The debtor may want to consider the following options to avoid this dilemma¹.

I. Transfer of Real Property in Bankruptcy

a. Sale of Real Property pursuant to 11 U.S.C. §363(b)

The Chapter 13 debtor has, exclusive of the trustee, the rights and powers of a trustee under 11 U.S.C. §363(b) and (f). See 11 U.S.C. §1303. Section 363 (b) allows a trustee to sell property of the estate out of the ordinary course of business after notice and a hearing. An articulated business justification for selling the property is an implicit requirement of a §363 sale.

¹ This is not an exhaustive list of all options a debtor may have.

In re Continental Air Lines, Inc., 780 F.2d 1223, 1226 (5th Cir. 1986). A sale pursuant to §363(b) would be subject to any liens or mortgages encumbering the property.

b. Sale of Real Property pursuant to 11 U.S.C. §363(f)

The debtor may also sell property free and clear of any interest in the property of an entity other than the estate only if:

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

See 11 U.S.C. §363(f).

If only one of the foregoing conditions of §363(f) are met, a sale of the property may occur. 3 Collier on Bankruptcy ¶363.06 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) The conditions most likely to be met by a Chapter 13 Debtor are (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; or (2) such entity consents.

i. Applicable nonbankruptcy law

A foreclosure action under state law may permit the sale of real property free and clear of many or all interests and thereby satisfying §363(f)(1). However, a bankruptcy practitioner would want to review the interests sought to be set aside under §363(f)(1) and respective state law. For example, under Florida law, a foreclosure judgment does not foreclose an interest as to the claims or rights under Chapter 718 or Chapter 720, Florida Statutes, which provides that

owners are jointly and severally liable with the previous owner for all unpaid homeowner or condominium assessments that came due up to the time of transfer of title, with some limited exceptions. See *Florida Statutes Chapter 718.116, Chapter 720.3085*. As a result, the Debtor may not be able to proceed under §363(f)(1) using Florida law with respect to the interests of condominium or homeowner associations.

ii. Consent to the Sale

The debtor may sell property free and clear of any interest in the property with the consent of the entity that holds the interest or lien. See 11 U.S.C. §363(f)(2). Consent may be obtained expressly or implicitly, provided that the entity had notice of the sale and failed to object. See *Future Source LLC v. Reuters Limited*, 312 F.3d 281, 285 (7th Cir. 2002); *In re GSC, Inc.*, 453 B.R. 132, 183 (Bankr. S.D.N.Y. 2011); See also *Daewoo Motor America, Inc., v. General Motors Corp.*, 315 B.R. 148, 159 (M.D. Fla. 2004) (citing *Future Source LLC* to determine that entity consented to modified plan by failing to object). Bankruptcy Rule 6004 (c) requires that a motion to sell free and clear of liens and other interests be served on the parties that have liens or other interests in accordance with Rule 9014. In particular, Rule 7004 (h) which is made applicable by Rule 9014(b) requires that an insured depository institution be served by certified mail addressed to an officer of the institution, unless the institution has appeared by its attorney or the other exceptions set forth in the rule apply. See Bankruptcy Rules 6004(c), 7004(h).

However, this does not mean all is lost for the lien holder. The holder of a lien on the property to be sold that secures an allowed claim may credit bid at the sale, unless the court orders otherwise. See 11 U.S.C. §363(k).

II. Non- Bankruptcy Transfers

The Chapter 13 debtor may want to consider the following non-bankruptcy transfers to surrender real property.

a. Deed in Lieu of Foreclosure

A deed in lieu of foreclosure is “a deed by which a borrower conveys fee-simple title to the lender in satisfaction of a mortgage debt and as a substitute for foreclosure.” Black’s Law Dictionary (1996). The process to obtain a deed in lieu may be difficult for some Chapter 13 debtors. Many Chapter 13 debtors have second mortgages, judgment liens, or association liens which encumber the real property seeking to be transferred. The deed in lieu agreement form provided by Making Homes Affordable, an official program of the Departments of the Treasury & Housing and Urban Development, states the following:

2. **Title.** Clear and marketable title to the Property must be transferred. We will contribute up to six percent (6%) of the unpaid principal balance of each subordinate lien on the Property in order of priority, not to exceed a total of \$6,000, toward paying off any subordinate lien holder. Each subordinate lien holder must release you from personal liability for the loans secured by their liens on the Property in order for you to qualify for this program, but we do not take any responsibility for ensuring that the lien holders do not seek to enforce personal liability against you. Therefore, we recommend that you take steps to satisfy yourself that the subordinate lien holders release you from personal liability.

Hafa DIL Agreement Form (Form 186); www.makinghomeaffordable.gov. Based on the cited language, the subordinate lien holders’ claims would have to total \$6,000 or less or the subordinate lien holders must agree to release their liens. Although not an impossibility, the debtor might not be able to satisfy this requirement. Likewise, a lender not participating in

Home Affordable Foreclosure Alternatives may require the consent of subordinate lien holders to obtain clear and marketable title. A debtor may be able to transfer the real property by deed in lieu if there are a limited amount of subordinate lien holders or the lender agrees to accept a deed in lieu without warranty language as to the subordinate liens.

b. Consent to Foreclosure Judgment & Rescheduling Sale

Prior to filing a bankruptcy case, a creditor may have filed a foreclosure action seeking to foreclose its lien on the real property. Assuming that the automatic stay is no longer in effect, a debtor may want to consider consenting to the foreclosure judgment to assist with expediting the sale of the real property. A consent or agreed judgment will usually avoid the necessity of a hearing and schedule a sale of the real property in accordance with state law. If a final judgment was entered prior to the bankruptcy filing and again assuming the automatic stay is not in effect, the debtor may also consider rescheduling the foreclosure sale in the state court. In Florida, two District Courts of Appeal have found that a trial court may reschedule a foreclosure sale after judgment over the objection of the plaintiff or judgment holder. See *LR5A v. Little House, LLC* 50 So.3d 691 (Fla. 5th DCA 2010) (affirming order scheduling foreclosure sale pursuant to association's motion to reschedule foreclosure sale); *Jade Winds Association, Inc., v. CitiBank, N.A.*, 63 So.3d 819 (Fla. 3rd DCA 2011) (reversing order cancelling foreclosure sale and remanding with directions to schedule the foreclosure sale) But, See *Royal Palm Corporate Center Association, LTD v. PNC Bank, N.A.* 89 So.3d 923 (Fla. 4th DCA 2012) (affirming final judgment that did not schedule foreclosure sale until plaintiff certified its money judgment was unsatisfied). At a minimum, these actions may prompt an affirmative action from the creditor to proceed with the foreclosure action.

III. Conclusion

No easy solution exists for the Chapter 13 debtor when a creditor refuses to accept surrendered real property. A problem underlying most of the foregoing options are the fees and costs that would be incurred by the debtor. In some cases, it might be cost effective for the debtor to do nothing with respect to the real property and negotiate with creditors for any post-petition claims.

ISSUES ARISING FROM CONVERSION OF A CHAPTER 13 CASE TO CHAPTER 7

I. Overview of Conversion from Chapter 13 to Chapter 7

Generally, Chapter 13 debtors may convert a case to Chapter 7 at anytime. 11 U.S.C. §1307(a). *In re John*, 352 B.R. 895, 899 (Bankr. N.D. Fla. 2006). The conversion of the case constitutes an order for relief under Chapter 7, but does not effect a change in the petition date, the commencement of the case or the order for relief except as provided in subsections (b) and (c) of Section 348. 11 U.S.C. §348(a). A claim against the debtor or estate arising after the order for relief but prior to conversion, other than administrative claims under 503(b), shall be treated for all purposes as if the claim had arisen immediately before the petition date. 11 U.S.C. §348(d). Property of the estate in the Chapter 7 case consists of property of the estate as of the petition date that remains in possession or control of the debtor as of the conversion date; however, with respect to cases converted in bad faith, property of the estate in the Chapter 7 case will also include property of the estate as of the date of conversion. See 11 U.S.C. §348(f) (1)(A),(2). See also *In re John*, 352 B.R. at 899, *In re Robinson*, 472 B.R. 854 (Bankr. M.D. Fla. 2012) *In re Ashley*, 2013 WL 315272 (Bankr. M.D. Fla. 2013).

II. Valuations and Secured Interests after Conversion to Chapter 7

In 2005, Congress amended §348(f)(1) which affected valuations and secured interests upon conversion of a Chapter 13 case. The amendment provided that valuations of property and allowed secured claims in a Chapter 13 case shall not apply in a case converted to Chapter 7. See 11 U.S.C. §348(f)(1)(B). In addition, with respect to cases converted from Chapter 13, any creditor holding security as of the petition date shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of conversion, notwithstanding any valuation or determination of the amount of the allowed secured claim under Chapter 13. See 11 U.S.C. §348(f)(C)(i).

III. Conclusion

The Chapter 13 debtor should carefully consider whether conversion to Chapter 7 is the best solution. Often debtors maintain possession or control of property that was property of the estate as of the petition date and would become property of the estate in the Chapter 7 case. Likewise, under §348(f)(1)(B), the valuations of property and allowed secured claims do not apply in the converted Chapter 7 case. Depending on the facts of the case, dismissal of the Chapter 13 case may be a better option for the debtor.

**OVERVIEW OF SERVICER REQUIREMENTS
IN BANKRUPTCY CASES UNDER THE NATIONAL MORTGAGE
SETTLEMENT AND THE NATIONAL MORTGAGE SERVICING STANDARDS**

PREPARED BY: MELISSA A. YOUNGMAN

What Servicers are Affected by the Settlement and Required to follow the NMSS?

- Bank of America, N.A.
- JPMorgan Chase Bank, N.A.
- Wells Fargo Bank, N.A.
- Citibank
- Ally/GMAC

Where can the NMSS be Found?

- Schedule A of the consent judgments (Schedule A is the same on all judgments)
- Consent judgments were entered in 49 states – Oklahoma refrained

What is Required?

- \$25 billion in monetary relief, including:
 - Cash payments to former homeowners and to the state and federal government
 - Principal reductions and other loan modifications
 - Refinancing of underwater mortgages
- Compliance with NMSS

Who may Enforce?

- No private right of action by borrowers/homeowners
- Attorney Generals can file action to enforce in District Court for the District of Columbia and can seek sanctions

What are the New Requirements with respect to Bankruptcy Pleadings?

- Pleadings, Affidavits, Declarations and Default Notices Must:
 - Be “accurate and complete and...supported by competent and reliable evidence”
 - Comply with state law notarization requirements
 - Not contain information that is false or unsubstantiated
 - Accurately identify the affiant by name, title, and employer
 - Affiants must be individuals, not entities
 - Affidavits must be signed by hand, and must be dated

- All information on affidavit shall be complete at the time the document is signed
- Proof of Claims:
 - Factual assertions must be accurate, complete and supported by competent and reliable evidence
 - If servicer has filed a proof of claim or motion for relief from stay that contains materially inaccurate information in a case pending before the settlement, the servicer must file an amended claim or motion, at the servicer's expense, within 30 days of discovering the inaccuracy
 - Loan documents must be attached, including copies of:
 - The note, with any endorsements
 - The mortgage/deed of trust with evidence of recordation/perfection
 - Any assignments that may be required to show servicer's right to enforce the note under applicable state law
 - If the note is lost or destroyed, a lost note affidavit must be attached
 - Servicer shall include a statement setting forth the basis for asserting that it has the "Right to Foreclose" (also required in motions for relief from stay)
 - Servicer must attach Official Forms as required by Bankruptcy Rule 3001(c)(2)(C) and comply with all other requirements in Bankruptcy Rule 3001
 - Must comply with Notice requirements set forth in Bankruptcy Rule 3002.1
 - If a servicer fails to provide a payment change notice, it shall waive and not collect any late charges or other fees imposed solely as a result of the debtor's failure to timely pay the new payment amount
 - If a servicer fails to timely provide a notice of post-petition fees, costs or expenses, as required by Rule 3002.1(c) and (g), they are deemed waived and may not be collected from the borrower, **unless** such charges are for "independent charges" which are fees paid by the servicer that are either specifically authorized by the borrower, or have been advanced by the servicer for taxes, homeowner's association fees, liens or insurance
- Motions for Relief from the Automatic Stay
 - If not previously submitted with a proof of claim, servicer must attach loan documents and include "Right to Foreclose" Language

- Motion must disclose the terms of any trial or permanent loan modification pending at the time of the filing of the motion
- If debtor is under review for a loss mitigation option at the time of the filing of the motion, the Servicer must disclose this in the motion
- An affidavit, sworn statement or declaration must be attached setting forth”
 - Whether the debtor has defaulted in paying pre- or post-petition amounts
 - Description of the default, and itemization of all amounts owed, including the amount, date, and description
 - All amounts claimed to be due and owing, including a statement of the amount necessary to cure any default on or about the date of the stay relief motion
- Payment Application in Chapter 13 Case
 - Servicers must insure prompt and proper application of payments
 - Debtor should be treated as current so long as debtor is making payments in accordance with a confirmed plan and any subsequent payment change notice
 - Upon dismissal of the debtor’s case, an order granting relief from stay, or entry of the debtor’s discharge, the Servicer must update and reconcile its records to show payments made during the pendency of the case, and the waiver of any fees, expenses, or charges as required under the National Mortgage Settlement (outlined above)

11TH CIRCUIT BANKRUPTCY UPDATE - CHAPTER 13

PREPARED BY: MELISSA A. YOUNGMAN

FDCPA Claims

Crawford v. LVNV Funding, LLC, 2013 WL 1947616 (M.D.AL. May 9, 2013) – District Court reviewed dismissal of two adversary proceedings by Bankruptcy Court. The District Court held that filing of a proof of claim in a chapter 13 case, even one barred by the statute of limitations, does not, by itself, constitute a violation of the Fair Debt Collection Practices Act. Dismissal of both adversary proceedings affirmed.

Adequate Protection, Stay Relief & Stay Violations

Credit Nation Lending Serv., LLC v. Nettles; 489 B.R. 239 (N.D.AL. March 25, 2013) – Chapter 13 Debtors brought adversary proceeding to enforce stay and for turnover of their motor vehicle wrongfully repossessed by Creditor post-petition. Bankruptcy Court held in favor of Debtors, and, among other things, awarded punitive damages cancelling the debt and security lien against the car in favor of Debtors. Creditor appealed the punitive damages award. Finding the Creditor’s conduct to be sufficiently egregious, the District Court affirmed.

Thomason v. Chestatee Community Assoc., Inc., 2013 WL 2154635 (Bankr. N.D.GA., Mar. 5, 2013) – Debtor sought sanctions, including punitive damages, against Community Association for violating the automatic stay by sending a letter suspending her access to amenities, and because a member of the Association, unaware of who the Debtor was, questioned her identity and called the police when someone reported that she and her guests may have been trespassing in the community pool area. The Bankruptcy Court held that Defendant could be liable for the actions of intentional acts of its agents. The Court further held that the applicable legal standard to determine whether the stay was willfully and intentionally violated pursuant to 11 U.S.C. §362(k) “only requires knowledge of the stay and an intent to do the act which constitutes the violation – not an intent to produce the violation of the stay itself.” Although the Bankruptcy Court found that willful stay violations had occurred, thereby justifying the award of nominal compensatory damages and attorney’s fees, it would not award sanctions, explaining “[t]he automatic stay exists to protect debtors. But, it is not intended to be used as a means for recovering punitive damages anytime a debtor feels singled out in otherwise reasonably explainable situations occurring as a consequence of everyday human interaction and contact.”

In re Lamelas, 2013 WL 324028 (Bankr. S.D.FL. Jan. 28, 2013) – Bank of Coral Gables, LLC moved for relief from the automatic stay or for adequate protection in Debtor’s chapter 13 case. The Bankruptcy Court determined that the default rate of interest applied and vacated the stay pursuant to 11 U.S.C. §362(d), holding that the property at issue was not necessary for an effective reorganization, and that the Debtor did not have a reasonable possibility of a successful reorganization.

Liggins v. Crossgate Motors, Inc. (In re Liggins), 2013 WL 214238 (Bankr. S.D.GA. Jan. 14, 2013) – Chapter 13 Debtor filed motion for turnover against Crossgate Motors for the recovery of her car, which had been repossessed by Crossgate Motors hours before she filed bankruptcy. After determining that there was not sufficient equity in the car to adequately protect Crossgate Motors, the Court denied the Debtor’s motion.

Lien Stripping

In re Almeida, 2013 WL 1163777 (Bankr. M.D.FL. Mar. 18, 2013) – Condo Association argued that even if its lien was subordinate to first mortgage, Florida law prevents its lien from being stripped pursuant to Fla. Stat. § 718.116. The Bankruptcy Court held that the Condo Association’s wholly unsecured junior lien may be stripped, concluding that Section 718.116 does not address the permissibility of lien stripping under the Bankruptcy Code, and that condo associations “do not enjoy special status” under the Bankruptcy Code.

In re Buckner, 2013 WL 221993 (Bankr. M.D. FL. Jan. 17, 2013) – Debtor sought to strip the lien of Home Owner’s Association for unpaid assessments, as a wholly unsecured junior lien, arguing that the first mortgage lien cannot be subordinate to the HOA’s lien for unpaid assessments under the HOA declaration, because the first mortgage is an institutional mortgage. The Association argued that the first mortgage is not an institutional loan because the mortgage lists MERS as the mortgagee. The Bankruptcy Court disagreed with the Association, and granted the Debtor’s motion.

In re Plummer, 484 B.R. 882 (Bankr. M.D.FL. Jan. 14, 2013) – Bankruptcy Court held that Credit Union’s under-secured first mortgage lien against a condo unit had priority over Condo Association’s lien for unpaid assessments, and that the Condo Association’s lien was subject to “strip off”. The Court further held that the Florida law did not give the Condo Association any special lien rights vis-à-vis the Credit Union, and therefore, did not alter the association’s totally subordinate lien position, nor affect the Debtor’s ability to “strip off” the Condo Association’s lien.

Proof of Claims & 3002.1 Notices

In re Crutchfield, 2013 WL 1812225, (Bankr. M.D.GA. Apr. 26, 2013) – Chapter 13 Debtor filed objections to seven proof of claims filed by credit card companies, pursuant to 11 U.S.C. §502(b)(1), because no assignments were attached to the claims. The proof of claims were all filed prior to the effective date of the amendments to Bankruptcy Rule 3001. The Bankruptcy Court held that under the prior version of Rule 3001, assignees of credit card claims were required to include copies of the assignments in order to establish *prima facie* evidence of the validity of their claim. However, the Court noted that under the amended version of the Rule, “the same assignees merely need to provide a summary of specific data that is calculated to provide the debtor with enough information to match the claim with the debt.” Because the claim objections were “then pending” on the effective date of the amendments to Rule 3001, and because the amended rule “promotes the goals of an efficient claims allowance process that minimizes economic burdens on the creditor, without in any way limiting the debtor’s ability to challenge a claim for any substantive basis,” the Bankruptcy Court concluded that Amended Rule 3001 applied in this case. The Court overruled the Debtor’s objections, explaining that each of the proof of claims constituted *prima facie* evidence of the validity and amount of the claims pursuant to amended Rule 3001, which the Debtor failed to adequately refute.

In re Owens, 2013 WL 49805 (Bankr. M.D.AL. Jan. 3, 2013) – Court disallowed creditor’s claim for recovery of a payday loan where creditor failed to provide the supporting documentation necessary for its claim. Once the Debtor called into question whether the Creditor had provided sufficient documentation to support its claim, under 11 U.S.C. §502(b), Creditor had burden to show that it did. Creditor failed to do so, and the Court disallowed its claim.

In re Porco, 2013 WL 1283378 (Bankr. M.D.FL. Mar. 28, 2013) – Court disallowed amendment to Creditor’s proof of claim to convert its second mortgage claim from a secured claim to a wholly unsecured claim, where the Creditor waited six months after the foreclosure sale of its collateral to file the amended claim, and where the amended claim did not cure a defect in its initial claim.

In re Castleberry Rattler, 2013 WL 828286 (Bankr. S.D.AL. Mar. 6, 2013) – Creditor obtained stay relief and filed an administrative claim for unpaid post-petition residential rents due under a lease entered into post-petition, pursuant to 11 U.S.C. §503(b)(1)(A). Bankruptcy Court held that Section 1305(a)(2) of the Bankruptcy Code did not preclude Creditor from seeking an administrative claim under Section 503(b)(1)(A), and that administrative claim was warranted for the following reasons: (i) the post-petition lease provided a “demonstrable benefit” to the Debtor’s bankruptcy estate, because “in order to work and fund the plan, it was necessary for the Debtor to have some place to live,” (ii) Creditor filed a motion for relief from stay and obtained a stay relief order that stated that any unpaid rent would be an administrative claim, and (iii) the Debtor did not object to entry of the final order on the stay relief motion.

In re Cloud, 2013 WL 441543 (Bankr. S.D.GA., Jan. 13, 2013) – Failure to appear at hearing resulted in Order striking Creditor’s Notice of Post-Petition Fees and Costs.

Judicial Estoppel and Failure to Disclose Causes of Action in Bankruptcy

In re D’Antignac, 2013 WL 1084214, (Bankr. S.D.GA. Feb. 19, 2013) – Chapter 13 Debtor filed motion to reopen her chapter 13 case more than three years after her case was discharged and closed, in order to pursue an employment discrimination claim against her employer, John Deere. The Debtor was attempting to defeat John Deere’s argument that her discrimination claim was judicially estopped because she failed to amend her bankruptcy schedules to include her potential claim against it. Although the Bankruptcy Court found that John Deere did not have standing to oppose the Debtor’s motion to reopen her bankruptcy case, the Court denied the Debtor’s motion, finding that it would serve no purpose to do so. Specifically, the Bankruptcy Court found that it could not re-open the estate simply to administer a potential asset at this late point (more than seven years after the first payment became due under the Debtor’s chapter 13 plan, and more than three years after the Debtor received her discharge), and that the Bankruptcy Court was not the correct forum to determine whether the Debtor’s claim against John Deere has been judicially estopped.

Fields v. Buy George Auto Sales, Inc. (In re Fields), 2013 WL 1136923 (Bankr. N.D.AL. Mar. 19, 2013) – Debtor filed an objection to claim and an adversary proceeding to recover damages against Buy George Auto Sales, Inc., based on alleged violations of the Truth in Lending Act and negligent or willful conduct. In response, Buy George filed a motion to dismiss the adversary proceeding claiming that the Debtor was judicially estopped from prosecuting the claim, because she failed to list her stated causes of action in her petition and schedules. The Bankruptcy Court ruled that although the Debtor is required to amend her schedules and to modify her confirmed plan, in the event she makes any recover on her claim, she is not judicially estopped from pursuing the claim, because there is no evidence that her actions were “calculated to make a mockery of the judicial system.”

In re James, 487 B.R. 587 (Bankr. N.D.GA. Feb. 19, 2013) – Chapter 13 Debtor filed motion to reopen her chapter 13 bankruptcy case to amend her schedules to add a counterclaim in a state court action to quiet title against her home, and to defeat the judicial estoppel argument set forth by the plaintiff in that

case. Noting that the Debtor's confirmed plan provided 100% payment to her creditors and that there was no evidence that the Debtor's failure to include her counterclaim in her schedules was "calculated to make a mockery" of the judiciary, the Court granted the Debtor's motion.

Perkins v. Berg Spiral Pipe Corp. (In re Perkins), 2013 WL 4849164 (S.D.AL, Feb. 7, 2013) – District Court granted motion for partial summary judgment, based on theory of judicial estoppel, in favor of Defendant in EEOC claim for racial discrimination filed by chapter 13 bankruptcy Debtor, where Debtor was aware of his potential claim and intentionally failed to include the claim in his bankruptcy petition and schedules.

Dismissal, Conversion and Bad-Faith Issues

In re Davis, 489 B.R. 478 (Bankr. S.D.GA. Mar. 22, 2013) – The United States Trustee moved to dismiss Debtor's chapter 7 case based on a presumption of abuse under 11 U.S.C. §707(b). Debtor argued that because her case was filed initially filed as a chapter 13 case, and later converted to a chapter 7 case, Section 707(b) of the Bankruptcy Code did not apply. The Court concluded that Section 707(b) applies in converted cases, and that the Debtor's case could be dismissed.

Meredith v. Roberts (In re Roberts), 2013 WL 441378 (Bankr. S.D.GA. Jan. 24, 2013) – Bankruptcy Court dismissed chapter 13 Debtor's case for bad-faith where the Debtor failed to disclose his wife's income as a substitute teacher to the Court.

In re Wood, 2013 WL 1969303 (Bankr. S.D.GA., May 13, 2013) – Bankruptcy Court held that in order to be a chapter 13 debtor, the Debtor must comply with the credit counseling requirement set forth in 11 U.S.C. § 109(h), unless he qualifies under one of the three exceptions set forth in Section 109(h). Absent one of the exceptions, a debtor's case must be dismissed. Here, the Debtor did not qualify for any of the exceptions, and his case was dismissed.

Appellate Issues – Interlocutory Orders

In re Brannan, 2013 WL 838240 (S.D.AL. Mar. 5, 2013) – Chapter 13 Debtors filed adversary proceeding against Defendant, Wells Fargo Bank, N.A., alleging improper practices regarding affidavits filed in the U.S. Bankruptcy Court for the Southern District of Alabama. Debtors sought class certification. After initially denying Debtors' motion without prejudice, and upon subsequent motion filed by the Debtors, the Bankruptcy Court eventually entered an order certifying two classes. Wells Fargo appealed. District Court denied the appeal, finding that since the order was an interlocutory order, it was not required to hear the appeal, applying the standards articulated in 28 U.S.C. §1292(b).

Standing and Voluntary Abstention

In re Joseph P. Brown, Jr., 2013 WL 85131 (Bankr. M.D. FL. Jan. 8, 2013) – Chapter 13 Debtors filed adversary proceeding against JPMorgan Chase Bank, N.A. alleging that Chase did not have standing to pursue mortgage claim in bankruptcy case, due to alleged defects in the chain of title. Chase filed a motion to dismiss, or for voluntary abstention by the Bankruptcy Court. Finding that the Debtors' complaint alleged a valid cause of action, the Court denied the dismissal motion. However, the Court granted the motion for voluntary abstention, finding that the state court would be better-suited to determine the validity of Chase's standing to enforce the note and mortgage.

Fed. Nat'l. Mtg. Assoc. v. Ohuche, 2013 WL 937571 (Bankr. N.D.GA. Feb. 5, 2013) – Fannie Mae moved for stay relief to continue a dispossessory proceeding against the chapter 13 Debtor. Although an appeal was pending on the state court's order issuing a writ of possession, the Bankruptcy Court granted Fannie Mae stay relief noting that “[b]ecause a debtor's estate holds no interest in property which has been transferred pursuant to a foreclosure sale and executed deed, this Court and other courts routinely modify the automatic stay to permit state court dispossessory proceedings to continue.” The Debtor also claimed that Fannie Mae did not have standing to pursue stay relief. However, the Bankruptcy Court explained that there is a difference between standing to pursue and proof of claim and standing to pursue relief from the stay. All that is needed to pursue stay relief is a “colorable claim to property of the estate.”

In re Cecil, 488 B.R. 200 (Bankr. M.D.FL. Mar. 7, 2013) - Chapter 13 Trustee filed application to employee special counsel to pursue a fraudulent transfer action, and creditors objected, arguing that the Trustee did not have statutory authority to pursue the avoidance action. The Bankruptcy Court rejected creditors' argument that the omission of reference to 11 U.S.C. §704(a)(1) in the list of the chapter 13 trustee's duties, as enumerated in 11 U.S.C. §1302(b)(1), somehow meant that the Trustee could not pursue avoidance actions. Accordingly, the Bankruptcy Court overruled the creditors' objection, holding that there is “significant primary and secondary support” for the proposition that chapter 13 trustees have a right to pursue avoidance actions, and no support to hold otherwise.

In re Palmer-Dawkins, 2013 WL 937603 (Bankr. N.D.GA. Feb. 12, 2013) – Chapter 13 Debtor filed objection to Notice of Transfer of Claim from BAC Home Loans Servicing, LP to Ocwen. Debtor objected because she did not “feel” that Ocwen was properly servicing her mortgage loan. The Bankruptcy Court overruled the objection, holding that Debtor had no standing to object to the transfer of claim.

Redemption of Real Property through Plan

Francis v. Scorpion Group Restaurant (In re Francis), 489 B.R. 262 (Bankr. N.D.GA. Mar. 13, 2013) – Chapter 13 Debtor moved for determination of (i) secured status of claim of pre-petition tax sale purchaser, and (ii) Debtor's ability to redeem her investment property by making payments to the purchaser under her Chapter 13 plan. The tax sale purchaser objected. Noting that the redemption period had not expired when the Debtor filed her petition, and that her plan provided for the redemption amount to be paid in full, the Bankruptcy Court held that the tax sale purchaser held a secured claim against the Debtor's bankruptcy estate pursuant to 11 U.S.C. §101, and that the Debtor could pay the entire redemption amount through a confirmed chapter 13 plan. However, the Court was careful to note that if the Debtor is unable to confirm her plan or her case gets dismissed, then she will not be able to redeem the property at issue, since the statutory deadline to do so had expired and was not extended under Section 108 of the Bankruptcy Code.

Property of the Estate

In re Castleberry, 2013 WL 1397705 (Bankr. S.D.GA. Mar. 15, 2013) – Chapter 13 Debtor filed motion for turnover, seeking to compel Trustee to turnover non-exempt insurance proceeds acquired post-confirmation, due to a car accident. Debtor's truck was destroyed in the accident resulting in a payout from the insurance company. After satisfaction of the lien holder's claim, the remaining proceeds were disbursed to the Trustee. The Debtor then amended his schedules B and C to exempt a large portion of

the remaining insurance proceeds, and the Trustee disbursed the exempt portion to the Debtor. At issue before the court was whether the Trustee should be required to turn over the remaining non-exempt proceeds to the Debtor. Debtor argued that the funds should be turned over to him, because the truck re-vested in him at confirmation. The Trustee argued that because the accident occurred post-confirmation, the insurance proceeds were a new asset of the estate, and did not re-vest in the Debtor. Applying the “estate transformation” approach set forth in *Telfair v. First Union Mortg. Corp.*, 216 F. 3d 1333 (11th Cir. 2000), and distinguishing the Debtor’s case from the facts in *In re Waldron v. Brown (In re Waldron)*, 563 F. 3d 1239 (11th Cir. 2008), the Bankruptcy Court held that the insurance proceeds recovered by the Debtor were “not a new asset,” but “a substitution for the truck,” and should be turned over to the Debtor.

In re Lee, 2013 WL 1702414 (Bankr. M.D.AL. Apr. 19, 2013) – Bankruptcy Court sustained objection to Debtor’s chapter 13 plan filed by Debtor’s landlord. Debtor claimed that she had an interest in the property at issue under a contract for deed that was not signed by Landlord. Landlord claimed that there was no contract for deed and that the Debtor was merely a holdover tenant. Bankruptcy Court determined that under Alabama state law, the contract for deed was not effective without the Landlord’s signature, and found in favor of the Landlord.

Sanchez-Villalba v. Herkert (In re Sanchez-Villalba), 2013 WL 537496 (S.D.FL. Feb. 12, 2013) – District Court affirmed Bankruptcy Court’s decision holding that Debtor’s ¼ interest in two homes deeded to her, and other members of her family, for estate planning purposes by her father, constituted property of the Debtor’s bankruptcy estate, pursuant to 11 U.S.C. §541. Debtor argued that the property should be treated as part of a “resulting trust” under Florida state law, and, therefore excluded from her bankruptcy estate. However, the District Court found that the record supported the Bankruptcy Court’s findings and affirmed its holding denying confirmation in the Debtor’s chapter 13 bankruptcy case, and denying rehearing of the underlying order.

Current Monthly Income, Projected Disposable Income & Applicable Commitment Period

In re Lorenzo, 2013 WL 1955319 (Bankr. S.D.FL. May 10, 2013) – Debtors filed a third motion to modify their confirmed plan and filed an amended Pro-Forma Current Monthly Income form, which (i) reduced the percentage to be paid out to unsecured creditors, (ii) changed the amount of the standard IRS expenses in the Debtors’ CMI to be consistent with the amounts allowed in cases filed in 2013, and (iii) added additional expenses to the CMI for life insurance, health insurance and retirement savings. The Bankruptcy Court held that the Debtors could use the new CMI form with the new standard expense amounts when modifying their plan. However, the Court held that the health insurance expense was the only new expense the Debtors could add to the CMI pursuant to 11 U.S.C. §1329(a)(4).

In re Romero, 2013 WL 241742 (Bankr. S.D.FL. Jan. 22, 2013) – Chapter 13 Trustee objected to confirmation where self-employed Debtor deducted business expenses from his self-employed income, to determine that he was entitled to file a plan with only a three year commitment period. Trustee argued that Debtor could deduct business expenses in Part IV of the Official Bankruptcy Form B22C to determine disposable income, but that he could not do so in Part I of Form B22C when determining his current monthly income, for purposes of determining the applicable commitment period. The Trustee argued that the plain-language of 11 U.S.C. §§ 101(10A) and 1325(b)(2)(B) dictates this calculation, and that the Form is inconsistent with the Bankruptcy Code. The Court disagreed and overruled the Trustee’s

objection, explaining that “the Trustee’s calculation would artificially inflate the Debtor’s income, by including the business revenue that would be consumed by business expenses, consequently forcing a longer commitment period under Section 1325(b)(4).”

In re Scott & In re Lundy, 488 B.R. 246 (Bankr. M.D.GA., Jan. 11, 2013) – Bankruptcy Court addressed objections to confirmation filed by Chapter 13 Trustee in two separate cases regarding the exclusion of social security benefits from the calculation of the Debtors’ “projected disposable income” pursuant to 11 U.S.C. §1325(b)(1)(B). In both cases, the Debtors failed to include social security benefits they were receiving. In the Scott case, the Debtor also failed to include the social security benefits received by his non-filing spouse. The Bankruptcy Court overruled the Trustee’s objections in both cases, and determined that the social security benefits of either Debtors or their non-filing spouses should be excluded from the calculation of a Debtor’s “projected disposable income” pursuant to Section 1325(b)(1)(B).

Jurisdiction of Bankruptcy Court

Mercedes-Benz Fin. Serv. of Am., LLC d/b/a DCFS USA, LLC v. Corner Lot, Inc. d/b/a Corner Lot Towing (In re Lyons), 489 B.R. 270 (Bankr. N.D.GA. Mar. 18, 2013) – Creditor with secured interest in Debtor’s truck filed an adversary proceeding against a competing lien holder to enforce the stay and avoid its lien, prior to selling the truck in satisfaction of its own lien. The competing lien holder filed a motion to dismiss for lack of subject matter jurisdiction. Bankruptcy Court held that it had both “arising under” and “related to” jurisdiction with respect to the causes of action brought forth by the parties, and thus, it had subject matter jurisdiction.

Discharge/Dischargeability Issues

Marshall v. Marshall (In re Marshall), 489 B.R. 630 (Bankr. S.D.GA. Apr. 3, 2013) – Bankruptcy Court held that attorney’s fee award entered against Debtor in his divorce was in the nature of a non-dischargeable domestic support obligation, payable on a priority basis, and excepted from the Debtor’s discharge, pursuant to 11 U.S.C. §523(a)(5).

In re Nachon-Torres, 2013 WL 793246 (Bankr. S.D.FL. Mar. 4, 2013) – Bankruptcy Court held that lump-sum payment to be made by Debtor to her ex-husband pursuant to a Marital Settlement Agreement to “achieve an equitable distribution of [the parties’] marital estate” was not in the nature of a non-dischargeable domestic support obligation, and would be discharged upon successful completion of her chapter 13 bankruptcy plan.

McQuown v. Slayton (In re Slayton), 2013 WL 1080545 (Bankr. S.D.GA. Mar. 12, 2013) – Bankruptcy Court granted Plaintiff’s motion for summary judgment in adversary proceeding seeking a determination that debt owed to Plaintiff should be excepted from the Debtor’s discharge pursuant to 11 U.S.C. §523(a)(2)(A). Explaining that the state court had already entered a judgment holding that the Debtor committed fraud in procuring the debt, and that the Debtor could not re-litigate the issue before the Bankruptcy Court, the Court found that there was no material issue of fact and granted Plaintiff’s motion.

In re Snow, 2013 WL 960208 (Bankr. M.D.AL. Mar. 12, 2013) – Bankruptcy Court dismissed chapter 13 Debtor’s bankruptcy case pursuant to 11 U.S.C. §1307(c)(6), where Debtor knowingly accepted and spent

personal injury settlement funds that should have been disbursed to the Trustee for distribution to her creditors.

In re Strength, 2013 WL 752476 (Bankr. M.D.AL. Feb. 27, 2013) – Debtor’s ex-spouse objected to the discharge of her claim against the Debtor, representing the first and second mortgage indebtedness on her home. Debtor’s ex-spouse argued that her claim arose from the parties’ divorce, and is not dischargeable, pursuant to 11 U.S.C. §1328(a)(5), because it is in the nature of alimony, maintenance and support. Debtor argued that the debt is in the nature of a property settlement, and therefore, is dischargeable, pursuant to Section 1328(a). The Bankruptcy Court held that under Alabama state law, the debt is in the nature of a property settlement, and, therefore, the debt is dischargeable so long as the Debtor completes his chapter 13 plan and receives a discharge pursuant to 11 U.S.C. §1328(b).

Steele v. Heard, 487 B.R. 302 (S.D.AL. Feb. 4, 2013) – District Court upheld Bankruptcy Court’s findings that chapter 13 Debtor’s pension benefits owed to Debtor’s ex-spouse pursuant to a divorce proceeding was a dischargeable debt upon successful completion of Debtor’s chapter 13 plan.

Exemption Issues

In re Swetic, 2013 WL 988160 (Bankr. M.D.FL. Mar. 13, 2013) – Trustee objected to the Debtors’ exemption of a bank account directly traceable to unemployment benefits, arguing that unemployment benefits are not exempt after they are received by a debtor. The Bankruptcy Court agreed and denied confirmation of the Debtors’ plan, pursuant to 11 U.S.C. §1325(a)(4).

Settlement Term Sheet

The provisions outlined below are intended to apply to loans secured by owner-occupied properties that serve as the primary residence of the borrower unless otherwise noted herein.

I. FORECLOSURE AND BANKRUPTCY INFORMATION AND DOCUMENTATION.

Unless otherwise specified, these provisions shall apply to bankruptcy and foreclosures in all jurisdictions regardless of whether the jurisdiction has a judicial, non-judicial or quasi-judicial process for foreclosures and regardless of whether a statement is submitted during the foreclosure or bankruptcy process in the form of an affidavit, sworn statement or declarations under penalty of perjury (to the extent stated to be based on personal knowledge) (“Declaration”).

- A. Standards for Documents Used in Foreclosure and Bankruptcy Proceedings.
1. Servicer shall ensure that factual assertions made in pleadings (complaint, counterclaim, cross-claim, answer or similar pleadings), bankruptcy proofs of claim (including any facts provided by Servicer or based on information provided by the Servicer that are included in any attachment and submitted to establish the truth of such facts) (“POC”), Declarations, affidavits, and sworn statements filed by or on behalf of Servicer in judicial foreclosures or bankruptcy proceedings and notices of default, notices of sale and similar notices submitted by or on behalf of Servicer in non-judicial foreclosures are accurate and complete and are supported by competent and reliable evidence. Before a loan is referred to non-judicial foreclosure, Servicer shall ensure that it has reviewed competent and reliable evidence to substantiate the borrower’s default and the right to foreclose, including the borrower’s loan status and loan information.
 2. Servicer shall ensure that affidavits, sworn statements, and Declarations are based on personal knowledge, which may be based on the affiant’s review of Servicer’s books and records, in accordance with the evidentiary requirements of applicable state or federal law.
 3. Servicer shall ensure that affidavits, sworn statements and Declarations executed by Servicer’s affiants are based on the affiant’s review and personal knowledge of the accuracy and completeness of the assertions in the affidavit, sworn statement or Declaration, set out facts that Servicer reasonably believes would be admissible in evidence, and show that the affiant is competent to testify on the matters stated. Affiants shall confirm that they have reviewed competent and reliable evidence to substantiate the

borrower's default and the right to foreclose, including the borrower's loan status and required loan ownership information. If an affiant relies on a review of business records for the basis of its affidavit, the referenced business record shall be attached if required by applicable state or federal law or court rule. This provision does not apply to affidavits, sworn statements and Declarations signed by counsel based solely on counsel's personal knowledge (such as affidavits of counsel relating to service of process, extensions of time, or fee petitions) that are not based on a review of Servicer's books and records. Separate affidavits, sworn statements or Declarations shall be used when one affiant does not have requisite personal knowledge of all required information.

4. Servicer shall have standards for qualifications, training and supervision of employees. Servicer shall train and supervise employees who regularly prepare or execute affidavits, sworn statements or Declarations. Each such employee shall sign a certification that he or she has received the training. Servicer shall oversee the training completion to ensure each required employee properly and timely completes such training. Servicer shall maintain written records confirming that each such employee has completed the training and the subjects covered by the training.
5. Servicer shall review and approve standardized forms of affidavits, standardized forms of sworn statements, and standardized forms of Declarations prepared by or signed by an employee or officer of Servicer, or executed by a third party using a power of attorney on behalf of Servicer, to ensure compliance with applicable law, rules, court procedure, and the terms of this Agreement ("the Agreement").
6. Affidavits, sworn statements and Declarations shall accurately identify the name of the affiant, the entity of which the affiant is an employee, and the affiant's title.
7. Affidavits, sworn statements and Declarations, including their notarization, shall fully comply with all applicable state law requirements.
8. Affidavits, sworn statements and Declarations shall not contain information that is false or unsubstantiated. This requirement shall not preclude Declarations based on information and belief where so stated.
9. Servicer shall assess and ensure that it has an adequate number of employees and that employees have reasonable time to prepare, verify, and execute pleadings, POCs, motions for relief from stay ("MRS"), affidavits, sworn statements and Declarations.

10. Servicer shall not pay volume-based or other incentives to employees or third-party providers or trustees that encourage undue haste or lack of due diligence over quality.
11. Affiants shall be individuals, not entities, and affidavits, sworn statements and Declarations shall be signed by hand signature of the affiant (except for permitted electronic filings). For such documents, except for permitted electronic filings, signature stamps and any other means of electronic or mechanical signature are prohibited.
12. At the time of execution, all information required by a form affidavit, sworn statement or Declaration shall be complete.
13. Affiants shall date their signatures on affidavits, sworn statements or Declarations.
14. Servicer shall maintain records that identify all notarizations of Servicer documents executed by each notary employed by Servicer.
15. Servicer shall not file a POC in a bankruptcy proceeding which, when filed, contained materially inaccurate information. In cases in which such a POC may have been filed, Servicer shall not rely on such POC and shall (a) in active cases, at Servicer's expense, take appropriate action, consistent with state and federal law and court procedure, to substitute such POC with an amended POC as promptly as reasonably practicable (and, in any event, not more than 30 days) after acquiring actual knowledge of such material inaccuracy and provide appropriate written notice to the borrower or borrower's counsel; and (b) in other cases, at Servicer's expense, take appropriate action after acquiring actual knowledge of such material inaccuracy.
16. Servicer shall not rely on an affidavit of indebtedness or similar affidavit, sworn statement or Declaration filed in a pending pre-judgment judicial foreclosure or bankruptcy proceeding which (a) was required to be based on the affiant's review and personal knowledge of its accuracy but was not, (b) was not, when so required, properly notarized, or (c) contained materially inaccurate information in order to obtain a judgment of foreclosure, order of sale, relief from the automatic stay or other relief in bankruptcy. In pending cases in which such affidavits, sworn statements or Declarations may have been filed, Servicer shall, at Servicer's expense, take appropriate action, consistent with state and federal law and court procedure, to substitute such affidavits with new affidavits and provide appropriate written notice to the borrower or borrower's counsel.

17. In pending post-judgment, pre-sale cases in judicial foreclosure proceedings in which an affidavit or sworn statement was filed which was required to be based on the affiant's review and personal knowledge of its accuracy but may not have been, or that may not have, when so required, been properly notarized, and such affidavit or sworn statement has not been re-filed, Servicer, unless prohibited by state or local law or court rule, will provide written notice to borrower at borrower's address of record or borrower's counsel prior to proceeding with a foreclosure sale or eviction proceeding.
 18. In all states, Servicer shall send borrowers a statement setting forth facts supporting Servicer's or holder's right to foreclose and containing the information required in paragraphs I.B.6 (items available upon borrower request), I.B.10 (account statement), I.C.2 and I.C.3 (ownership statement), and IV.B.13 (loss mitigation statement) herein. Servicer shall send this statement to the borrower in one or more communications no later than 14 days prior to referral to foreclosure attorney or foreclosure trustee. Servicer shall provide the Monitoring Committee with copies of proposed form statements for review before implementation.
- B. Requirements for Accuracy and Verification of Borrower's Account Information.
1. Servicer shall maintain procedures to ensure accuracy and timely updating of borrower's account information, including posting of payments and imposition of fees. Servicer shall also maintain adequate documentation of borrower account information, which may be in either electronic or paper format.
 2. For any loan on which interest is calculated based on a daily accrual or daily interest method and as to which any obligor is not a debtor in a bankruptcy proceeding without reaffirmation, Servicer shall promptly accept and apply all borrower payments, including cure payments (where authorized by law or contract), trial modification payments, as well as non-conforming payments, unless such application conflicts with contract provisions or prevailing law. Servicer shall ensure that properly identified payments shall be posted no more than two business days after receipt at the address specified by Servicer and credited as of the date received to borrower's account. Each monthly payment shall be applied in the order specified in the loan documents.
 3. For any loan on which interest is not calculated based on a daily accrual or daily interest method and as to which any obligor is not a debtor in a bankruptcy proceeding without reaffirmation, Servicer shall promptly accept and apply all borrower conforming

payments, including cure payments (where authorized by law or contract), unless such application conflicts with contract provisions or prevailing law. Servicer shall continue to accept trial modification payments consistent with existing payment application practices. Servicer shall ensure that properly identified payments shall be posted no more than two business days after receipt at the address specified by Servicer. Each monthly payment shall be applied in the order specified in the loan documents.

- a. Servicer shall accept and apply at least two non-conforming payments from the borrower, in accordance with this subparagraph, when the payment, whether on its own or when combined with a payment made by another source, comes within \$50.00 of the scheduled payment, including principal and interest and, where applicable, taxes and insurance.
 - b. Except for payments described in paragraph I.B.3.a, Servicer may post partial payments to a suspense or unapplied funds account, provided that Servicer (1) discloses to the borrower the existence of and any activity in the suspense or unapplied funds account; (2) credits the borrower's account with a full payment as of the date that the funds in the suspense or unapplied funds account are sufficient to cover such full payment; and (3) applies payments as required by the terms of the loan documents. Servicer shall not take funds from suspense or unapplied funds accounts to pay fees until all unpaid contractual interest, principal, and escrow amounts are paid and brought current or other final disposition of the loan.
4. Notwithstanding the provisions above, Servicer shall not be required to accept payments which are insufficient to pay the full balance due after the borrower has been provided written notice that the contract has been declared in default and the remaining payments due under the contract have been accelerated.
 5. Servicer shall provide to borrowers (other than borrowers in bankruptcy or borrowers who have been referred to or are going through foreclosure) adequate information on monthly billing or other account statements to show in clear and conspicuous language:
 - a. total amount due;
 - b. allocation of payments, including a notation if any payment has been posted to a "suspense or unapplied funds account";

- c. unpaid principal;
- d. fees and charges for the relevant time period;
- e. current escrow balance; and
- f. reasons for any payment changes, including an interest rate or escrow account adjustment, no later than 21 days before the new amount is due (except in the case of loans as to which interest accrues daily or the rate changes more frequently than once every 30 days);

Statements as described above are not required to be delivered with respect to any fixed rate residential mortgage loan as to which the borrower is provided a coupon book.

- 6. In the statements described in paragraphs I.A.18 and III.B.1.a, Servicer shall notify borrowers that they may receive, upon written request:
 - a. A copy of the borrower's payment history since the borrower was last less than 60 days past due;
 - b. A copy of the borrower's note;
 - c. If Servicer has commenced foreclosure or filed a POC, copies of any assignments of mortgage or deed of trust required to demonstrate the right to foreclose on the borrower's note under applicable state law; and
 - d. The name of the investor that holds the borrower's loan.
- 7. Servicer shall adopt enhanced billing dispute procedures, including for disputes regarding fees. These procedures will include:
 - a. Establishing readily available methods for customers to lodge complaints and pose questions, such as by providing toll-free numbers and accepting disputes by email;
 - b. Assessing and ensuring adequate and competent staff to answer and respond to consumer disputes promptly;
 - c. Establishing a process for dispute escalation;
 - d. Tracking the resolution of complaints; and
 - e. Providing a toll-free number on monthly billing statements.
- 8. Servicer shall take appropriate action to promptly remediate any inaccuracies in borrowers' account information, including:
 - a. Correcting the account information;
 - b. Providing cash refunds or account credits; and
 - c. Correcting inaccurate reports to consumer credit reporting

agencies.

9. Servicer's systems to record account information shall be periodically independently reviewed for accuracy and completeness by an independent reviewer.
10. As indicated in paragraph I.A.18, Servicer shall send the borrower an itemized plain language account summary setting forth each of the following items, to the extent applicable:
 - a. The total amount needed to reinstate or bring the account current, and the amount of the principal obligation under the mortgage;
 - b. The date through which the borrower's obligation is paid;
 - c. The date of the last full payment;
 - d. The current interest rate in effect for the loan (if the rate is effective for at least 30 days);
 - e. The date on which the interest rate may next reset or adjust (unless the rate changes more frequently than once every 30 days);
 - f. The amount of any prepayment fee to be charged, if any;
 - g. A description of any late payment fees;
 - h. A telephone number or electronic mail address that may be used by the obligor to obtain information regarding the mortgage; and
 - i. The names, addresses, telephone numbers, and Internet addresses of one or more counseling agencies or programs approved by HUD (<http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>).
11. In active chapter 13 cases, Servicer shall ensure that:
 - a. prompt and proper application of payments is made on account of (a) pre-petition arrearage amounts and (b) post-petition payment amounts and posting thereof as of the successful consummation of the effective confirmed plan;
 - b. the debtor is treated as being current so long as the debtor is making payments in accordance with the terms of the then-effective confirmed plan and any later effective payment change notices; and
 - c. as of the date of dismissal of a debtor's bankruptcy case, entry of an order granting Servicer relief from the stay, or entry of an order granting the debtor a discharge, there is a reconciliation of payments received with respect to the

debtor's obligations during the case and appropriately update the Servicer's systems of record. In connection with such reconciliation, Servicer shall reflect the waiver of any fee, expense or charge pursuant to paragraphs III.B.1.c.i or III.B.1.d.

- C. Documentation of Note, Holder Status and Chain of Assignment.
1. Servicer shall implement processes to ensure that Servicer or the foreclosing entity has a documented enforceable interest in the promissory note and mortgage (or deed of trust) under applicable state law, or is otherwise a proper party to the foreclosure action.
 2. Servicer shall include a statement in a pleading, affidavit of indebtedness or similar affidavits in court foreclosure proceedings setting forth the basis for asserting that the foreclosing party has the right to foreclose.
 3. Servicer shall set forth the information establishing the party's right to foreclose as set forth in I.C.2 in a communication to be sent to the borrower as indicated in I.A.18.
 4. If the original note is lost or otherwise unavailable, Servicer shall comply with applicable law in an attempt to establish ownership of the note and the right to enforcement. Servicer shall ensure good faith efforts to obtain or locate a note lost while in the possession of Servicer or Servicer's agent and shall ensure that Servicer and Servicer's agents who are expected to have possession of notes or assignments of mortgage on behalf of Servicer adopt procedures that are designed to provide assurance that the Servicer or Servicer's agent would locate a note or assignment of mortgage if it is in the possession or control of the Servicer or Servicer's agent, as the case may be. In the event that Servicer prepares or causes to be prepared a lost note or lost assignment affidavit with respect to an original note or assignment lost while in Servicer's control, Servicer shall use good faith efforts to obtain or locate the note or assignment in accordance with its procedures. In the affidavit, sworn statement or other filing documenting the lost note or assignment, Servicer shall recite that Servicer has made a good faith effort in accordance with its procedures for locating the lost note or assignment.
 5. Servicer shall not intentionally destroy or dispose of original notes that are still in force.
 6. Servicer shall ensure that mortgage assignments executed by or on behalf of Servicer are executed with appropriate legal authority, accurately reflective of the completed transaction and properly acknowledged.

D. Bankruptcy Documents.

1. **Proofs of Claim (“POC”).** Servicer shall ensure that POCs filed on behalf of Servicer are documented in accordance with the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and any applicable local rule or order (“bankruptcy law”). Unless not permitted by statute or rule, Servicer shall ensure that each POC is documented by attaching:
 - a. The original or a duplicate of the note, including all indorsements; a copy of any mortgage or deed of trust securing the notes (including, if applicable, evidence of recordation in the applicable land records); and copies of any assignments of mortgage or deed of trust required to demonstrate the right to foreclose on the borrower’s note under applicable state law (collectively, “Loan Documents”). If the note has been lost or destroyed, a lost note affidavit shall be submitted.
 - b. If, in addition to its principal amount, a claim includes interest, fees, expenses, or other charges incurred before the petition was filed, an itemized statement of the interest, fees, expenses, or charges shall be filed with the proof of claim (including any expenses or charges based on an escrow analysis as of the date of filing) at least in the detail specified in the current draft of Official Form B 10 (effective December 2011) (“Official Form B 10”) Attachment A.
 - c. A statement of the amount necessary to cure any default as of the date of the petition shall be filed with the proof of claim.
 - d. If a security interest is claimed in property that is the debtor’s principal residence, the attachment prescribed by the appropriate Official Form shall be filed with the proof of claim.
 - e. Servicer shall include a statement in a POC setting forth the basis for asserting that the applicable party has the right to foreclose.
 - f. The POC shall be signed (either by hand or by appropriate electronic signature) by the responsible person under penalty of perjury after reasonable investigation, stating that the information set forth in the POC is true and correct to the best of such responsible person’s knowledge, information, and reasonable belief, and clearly identify the responsible person’s employer and position or title with the

employer.

2. **Motions for Relief from Stay (“MRS”).** Unless not permitted by bankruptcy law, Servicer shall ensure that each MRS in a chapter 13 proceeding is documented by attaching:
 - a. To the extent not previously submitted with a POC, a copy of the Loan Documents; if such documents were previously submitted with a POC, a statement to that effect. If the promissory note has been lost or destroyed, a lost note affidavit shall be submitted;
 - b. To the extent not previously submitted with a POC, Servicer shall include a statement in an MRS setting forth the basis for asserting that the applicable party has the right to foreclose.
 - c. An affidavit, sworn statement or Declaration made by Servicer or based on information provided by Servicer (“MRS affidavit” (which term includes, without limitation, any facts provided by Servicer that are included in any attachment and submitted to establish the truth of such facts) setting forth:
 - i. whether there has been a default in paying pre-petition arrearage or post-petition amounts (an “MRS delinquency”);
 - ii. if there has been such a default, (a) the unpaid principal balance, (b) a description of any default with respect to the pre-petition arrearage, (c) a description of any default with respect to the post-petition amount (including, if applicable, any escrow shortage), (d) the amount of the pre-petition arrearage (if applicable), (e) the post-petition payment amount , (f) for the period since the date of the first post-petition or pre-petition default that is continuing and has not been cured, the date and amount of each payment made (including escrow payments) and the application of each such payment, and (g) the amount, date and description of each fee or charge applied to such pre-petition amount or post-petition amount since the later of the date of the petition or the preceding statement pursuant to paragraph III.B.1.a; and
 - iii. all amounts claimed, including a statement of the amount necessary to cure any default on or about the date of the MRS.

- d. All other attachments prescribed by statute, rule, or law.
 - e. Servicer shall ensure that any MRS discloses the terms of any trial period or permanent loan modification plan pending at the time of filing of a MRS or whether the debtor is being evaluated for a loss mitigation option.
- E. Quality Assurance Systems Review.
1. Servicer shall conduct regular reviews, not less than quarterly, of a statistically valid sample of affidavits, sworn statements, Declarations filed by or on behalf of Servicer in judicial foreclosures or bankruptcy proceedings and notices of default, notices of sale and similar notices submitted in non-judicial foreclosures to ensure that the documents are accurate and comply with prevailing law and this Agreement.
 - a. The reviews shall also verify the accuracy of the statements in affidavits, sworn statements, Declarations and documents used to foreclose in non-judicial foreclosures, the account summary described in paragraph I.B.10, the ownership statement described in paragraph I.C.2, and the loss mitigation statement described in paragraph IV.B.13 by reviewing the underlying information. Servicer shall take appropriate remedial steps if deficiencies are identified, including appropriate remediation in individual cases.
 - b. The reviews shall also verify the accuracy of the statements in affidavits, sworn statements and Declarations submitted in bankruptcy proceedings. Servicer shall take appropriate remedial steps if deficiencies are identified, including appropriate remediation in individual cases.
 2. The quality assurance steps set forth above shall be conducted by Servicer employees who are separate and independent of employees who prepare foreclosure or bankruptcy affidavits, sworn statements, or other foreclosure or bankruptcy documents.
 3. Servicer shall conduct regular pre-filing reviews of a statistically valid sample of POCs to ensure that the POCs are accurate and comply with prevailing law and this Agreement. The reviews shall also verify the accuracy of the statements in POCs. Servicer shall take appropriate remedial steps if deficiencies are identified, including appropriate remediation in individual cases. The pre-filing review shall be conducted by Servicer employees who are separate and independent of the persons who prepared the applicable POCs.

4. Servicer shall regularly review and assess the adequacy of its internal controls and procedures with respect to its obligations under this Agreement, and implement appropriate procedures to address deficiencies.

II. THIRD-PARTY PROVIDER OVERSIGHT.

A. Oversight Duties Applicable to All Third-Party Providers.

Servicer shall adopt policies and processes to oversee and manage foreclosure firms, law firms, foreclosure trustees, subservicers and other agents, independent contractors, entities and third parties (including subsidiaries and affiliates) retained by or on behalf of Servicer that provide foreclosure, bankruptcy or mortgage servicing activities (including loss mitigation) (collectively, such activities are “Servicing Activities” and such providers are “Third-Party Providers”), including:

1. Servicer shall perform appropriate due diligence of Third-Party Providers’ qualifications, expertise, capacity, reputation, complaints, information security, document custody practices, business continuity, and financial viability.
2. Servicer shall amend agreements, engagement letters, or oversight policies, or enter into new agreements or engagement letters, with Third-Party Providers to require them to comply with Servicer’s applicable policies and procedures (which will incorporate any applicable aspects of this Agreement) and applicable state and federal laws and rules.
3. Servicer shall ensure that agreements, contracts or oversight policies provide for adequate oversight, including measures to enforce Third-Party Provider contractual obligations, and to ensure timely action with respect to Third-Party Provider performance failures.
4. Servicer shall ensure that foreclosure and bankruptcy counsel and foreclosure trustees have appropriate access to information from Servicer’s books and records necessary to perform their duties in preparing pleadings and other documents submitted in foreclosure and bankruptcy proceedings.
5. Servicer shall ensure that all information provided by or on behalf of Servicer to Third-Party Providers in connection with providing Servicing Activities is accurate and complete.
6. Servicer shall conduct periodic reviews of Third-Party Providers. These reviews shall include:
 - a. A review of a sample of the foreclosure and bankruptcy documents prepared by the Third-Party Provider, to provide for compliance with applicable state and federal law and

this Agreement in connection with the preparation of the documents, and the accuracy of the facts contained therein;

- b. A review of the fees and costs assessed by the Third-Party Provider to provide that only fees and costs that are lawful, reasonable and actually incurred are charged to borrowers and that no portion of any fees or charges incurred by any Third-Party Provider for technology usage, connectivity, or electronic invoice submission is charged as a cost to the borrower;
- c. A review of the Third-Party Provider's processes to provide for compliance with the Servicer's policies and procedures concerning Servicing Activities;
- d. A review of the security of original loan documents maintained by the Third-Party Provider;
- e. A requirement that the Third-Party Provider disclose to the Servicer any imposition of sanctions or professional disciplinary action taken against them for misconduct related to performance of Servicing Activities; and
- f. An assessment of whether bankruptcy attorneys comply with the best practice of determining whether a borrower has made a payment curing any MRS delinquency within two business days of the scheduled hearing date of the related MRS.

The quality assurance steps set forth above shall be conducted by Servicer employees who are separate and independent of employees who prepare foreclosure or bankruptcy affidavits, sworn documents, Declarations or other foreclosure or bankruptcy documents.

7. Servicer shall take appropriate remedial steps if problems are identified through this review or otherwise, including, when appropriate, terminating its relationship with the Third-Party Provider.
8. Servicer shall adopt processes for reviewing and appropriately addressing customer complaints it receives about Third-Party Provider services.
9. Servicer shall regularly review and assess the adequacy of its internal controls and procedures with respect to its obligations under this Section, and take appropriate remedial steps if deficiencies are identified, including appropriate remediation in individual cases.

B. *Additional Oversight of Activities by Third-Party Providers.*

1. Servicer shall require a certification process for law firms (and recertification of existing law firm providers) that provide residential mortgage foreclosure and bankruptcy services for Servicer, on a periodic basis, as qualified to serve as a Third-Party Provider to Servicer, including that attorneys have the experience and competence necessary to perform the services requested.
2. Servicer shall ensure that attorneys are licensed to practice in the relevant jurisdiction, have the experience and competence necessary to perform the services requested, and that their services comply with applicable rules, regulations and applicable law (including state law prohibitions on fee splitting).
3. Servicer shall ensure that foreclosure and bankruptcy counsel and foreclosure trustees have an appropriate Servicer contact to assist in legal proceedings and to facilitate loss mitigation questions on behalf of the borrower.
4. Servicer shall adopt policies requiring Third-Party Providers to maintain records that identify all notarizations of Servicer documents executed by each notary employed by the Third-Party Provider.

III. BANKRUPTCY.

A. General.

1. The provisions, conditions and obligations imposed herein are intended to be interpreted in accordance with applicable federal, state and local laws, rules and regulations. Nothing herein shall require a Servicer to do anything inconsistent with applicable state or federal law, including the applicable bankruptcy law or a court order in a bankruptcy case.
2. Servicer shall ensure that employees who are regularly engaged in servicing mortgage loans as to which the borrower or mortgagor is in bankruptcy receive training specifically addressing bankruptcy issues.

B. Chapter 13 Cases.

1. In any chapter 13 case, Servicer shall ensure that:
 - a. So long as the debtor is in a chapter 13 case, within 180 days after the date on which the fees, expenses, or charges are incurred, file and serve on the debtor, debtor's counsel, and the trustee a notice in a form consistent with Official Form B10 (Supplement 2) itemizing fees, expenses, or charges (1) that were incurred in connection with the claim

after the bankruptcy case was filed, (2) that the holder asserts are recoverable against the debtor or against the debtor's principal residence, and (3) that the holder intends to collect from the debtor.

- b. Servicer replies within time periods established under bankruptcy law to any notice that the debtor has completed all payments under the plan or otherwise paid in full the amount required to cure any pre-petition default.
- c. If the Servicer fails to provide information as required by paragraph III.B.1.a with respect to a fee, expense or charge within 180 days of the incurrence of such fee, expense, or charge, then,
 - i. Except for independent charges ("Independent charge") paid by the Servicer that is either (A) specifically authorized by the borrower or (B) consists of amounts advanced by Servicer in respect of taxes, homeowners association fees, liens or insurance, such fee, expense or charge shall be deemed waived and may not be collected from the borrower.
 - ii. In the case of an Independent charge, the court may, after notice and hearing, take either or both of the following actions:
 - (a) preclude the holder from presenting the omitted information, in any form, as evidence in any contested matter or adversary proceeding in the case, unless the court determines that the failure was substantially justified or is harmless; or
 - (b) award other appropriate relief, including reasonable expenses and attorney's fees caused by the failure.
- d. If the Servicer fails to provide information as required by paragraphs III.B.1.a or III.B.1.b and bankruptcy law with respect to a fee, expense or charge (other than an Independent Charge) incurred more than 45 days before the date of the reply referred to in paragraph III.B.1.b, then such fee, expense or charge shall be deemed waived and may not be collected from the borrower.
- e. Servicer shall file and serve on the debtor, debtor's counsel, and the trustee a notice in a form consistent with the current draft of Official Form B10 (Supplement 1) (effective

December 2011) of any change in the payment amount, including any change that results from an interest rate or escrow account adjustment, no later than 21 days before a payment in the new amount is due. Servicer shall waive and not collect any late charge or other fees imposed solely as a result of the failure of the borrower timely to make a payment attributable to the failure of Servicer to give such notice timely.

IV. LOSS MITIGATION.

These requirements are intended to apply to both government-sponsored and proprietary loss mitigation programs and shall apply to subservicers performing loss mitigation services on Servicer's behalf.

A. Loss Mitigation Requirements.

1. Servicer shall be required to notify potentially eligible borrowers of currently available loss mitigation options prior to foreclosure referral. Upon the timely receipt of a complete loan modification application, Servicer shall evaluate borrowers for all available loan modification options for which they are eligible prior to referring a borrower to foreclosure and shall facilitate the submission and review of loss mitigation applications. The foregoing notwithstanding, Servicer shall have no obligation to solicit borrowers who are in bankruptcy.
2. Servicer shall offer and facilitate loan modifications for borrowers rather than initiate foreclosure when such loan modifications for which they are eligible are net present value (NPV) positive and meet other investor, guarantor, insurer and program requirements.
3. Servicer shall allow borrowers enrolled in a trial period plan under prior HAMP guidelines (where borrowers were not pre-qualified) and who made all required trial period payments, but were later denied a permanent modification, the opportunity to reapply for a HAMP or proprietary loan modification using current financial information.
4. Servicer shall promptly send a final modification agreement to borrowers who have enrolled in a trial period plan under current HAMP guidelines (or fully underwritten proprietary modification programs with a trial payment period) and who have made the required number of timely trial period payments, where the modification is underwritten prior to the trial period and has received any necessary investor, guarantor or insurer approvals. The borrower shall then be converted by Servicer to a permanent modification upon execution of the final modification documents,

consistent with applicable program guidelines, absent evidence of fraud.

B. Dual Track Restricted.

1. If a borrower has not already been referred to foreclosure, Servicer shall not refer an eligible borrower's account to foreclosure while the borrower's complete application for any loan modification program is pending if Servicer received (a) a complete loan modification application no later than day 120 of delinquency, or (b) a substantially complete loan modification application (missing only any required documentation of hardship) no later than day 120 of delinquency and Servicer receives any required hardship documentation no later than day 130 of delinquency. Servicer shall not make a referral to foreclosure of an eligible borrower who so provided an application until:
 - a. Servicer determines (after the automatic review in paragraph IV.G.1) that the borrower is not eligible for a loan modification, or
 - b. If borrower does not accept an offered foreclosure prevention alternative within 14 days of the evaluation notice, the earlier of (i) such 14 days, and (ii) borrower's decline of the foreclosure prevention offer.
2. If borrower accepts the loan modification resulting from Servicer's evaluation of the complete loan modification application referred to in paragraph IV.B.1 (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days of Servicer's offer of a loan modification, then the Servicer shall delay referral to foreclosure until (a) if the Servicer fails timely to receive the first trial period payment, the last day for timely receiving the first trial period payment, and (b) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.
3. If the loan modification requested by a borrower as described in paragraph IV.B.1 is denied, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3, Servicer will not proceed to a foreclosure sale until the later of (if applicable):
 - a. expiration of the 30-day appeal period; and
 - b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii)

if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the Servicer fails timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

4. If, after an eligible borrower has been referred to foreclosure, the Servicer receives a complete application from the borrower within 30 days after the Post Referral to Foreclosure Solicitation Letter, then while such loan modification application is pending, Servicer shall not move for foreclosure judgment or order of sale (or, if a motion has already been filed, shall take reasonable steps to avoid a ruling on such motion), or seek a foreclosure sale. If Servicer offers the borrower a loan modification, Servicer shall not move for judgment or order of sale, (or, if a motion has already been filed, shall take reasonable steps to avoid a ruling on such motion), or seek a foreclosure sale until the earlier of (a) 14 days after the date of the related offer of a loan modification, and (b) the date the borrower declines the loan modification offer. If the borrower accepts the loan modification offer (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days after the date of the related offer of loan modification, Servicer shall continue this delay until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.
5. If the loan modification requested by a borrower described in paragraph IV.B.4 is denied, then, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3, Servicer will not proceed to a foreclosure sale until the later of (if applicable):
 - a. expiration of the 30-day appeal period; and
 - b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii) if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the failure of the Servicer timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period

payment, after the borrower breaches the trial plan.

6. If, after an eligible borrower has been referred to foreclosure, Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter, but more than 37 days before a foreclosure sale is scheduled, then while such loan modification application is pending, Servicer shall not proceed with the foreclosure sale. If Servicer offers a loan modification, then Servicer shall delay the foreclosure sale until the earlier of (i) 14 days after the date of the related offer of loan modification, and (ii) the date the borrower declines the loan modification offer. If the borrower accepts the loan modification offer (verbally, in writing (including e-mail responses) or by submitting the first trial modification payment) within 14 days, Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.
7. If the loan modification requested by a borrower described in paragraph IV.B.6 is denied and it is reasonable to believe that more than 90 days remains until a scheduled foreclosure date or the first date on which a sale could reasonably be expected to be scheduled and occur, then, except when otherwise required by federal or state law or investor directives, if borrower is entitled to an appeal under paragraph IV.G.3.a, Servicer will not proceed to a foreclosure sale until the later of (if applicable):
 - a. expiration of the 30-day appeal period; and
 - b. if the borrower appeals the denial, until the later of (if applicable) (i) if Servicer denies borrower's appeal, 15 days after the letter denying the appeal, (ii) if the Servicer sends borrower a letter granting his or her appeal and offering a loan modification, 14 days after the date of such offer, (iii) if the borrower timely accepts the loan modification offer (verbally, in writing (including e-mail responses), or by making the first trial period payment), after the Servicer fails timely to receive the first trial period payment, and (iv) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.
8. If, after an eligible borrower has been referred to foreclosure, Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter, but within 37 to 15 days before a foreclosure sale is scheduled, then Servicer shall conduct an expedited review of the

borrower and, if the borrower is extended a loan modification offer, Servicer shall postpone any foreclosure sale until the earlier of (a) 14 days after the date of the related evaluation notice, and (b) the date the borrower declines the loan modification offer. If the borrower timely accepts the loan modification offer (either in writing or by submitting the first trial modification payment), Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.

9. If, after an eligible borrower has been referred to foreclosure, the Servicer receives a complete loan modification application more than 30 days after the Post Referral to Foreclosure Solicitation Letter and less than 15 days before a scheduled foreclosure sale, Servicer must notify the borrower before the foreclosure sale date as to Servicer's determination (if its review was completed) or inability to complete its review of the loan modification application. If Servicer makes a loan modification offer to the borrower, then Servicer shall postpone any sale until the earlier of (a) 14 days after the date of the related evaluation notice, and (b) the date the borrower declines the loan modification offer. If the borrower timely accepts a loan modification offer (either in writing or by submitting the first trial modification payment), Servicer shall delay the foreclosure sale until the later of (if applicable) (A) the failure by the Servicer timely to receive the first trial period payment, and (B) if the Servicer timely receives the first trial period payment, after the borrower breaches the trial plan.
10. For purposes of this section IV.B, Servicer shall not be responsible for failing to obtain a delay in a ruling on a judgment or failing to delay a foreclosure sale if Servicer made a request for such delay, pursuant to any state or local law, court rule or customary practice, and such request was not approved.
11. Servicer shall not move to judgment or order of sale or proceed with a foreclosure sale under any of the following circumstances:
 - a. The borrower is in compliance with the terms of a trial loan modification, forbearance, or repayment plan; or
 - b. A short sale or deed-in-lieu of foreclosure has been approved by all parties (including, for example, first lien investor, junior lien holder and mortgage insurer, as applicable), and proof of funds or financing has been provided to Servicer.

12. If a foreclosure or trustee's sale is continued (rather than cancelled) to provide time to evaluate loss mitigation options, Servicer shall promptly notify borrower in writing of the new date of sale (without delaying any related foreclosure sale).
13. As indicated in paragraph I.A.18, Servicer shall send a statement to the borrower outlining loss mitigation efforts undertaken with respect to the borrower prior to foreclosure referral. If no loss mitigation efforts were offered or undertaken, Servicer shall state whether it contacted or attempted to contact the borrower and, if applicable, why the borrower was ineligible for a loan modification or other loss mitigation options.
14. Servicer shall ensure timely and accurate communication of or access to relevant loss mitigation status and changes in status to its foreclosure attorneys, bankruptcy attorneys and foreclosure trustees and, where applicable, to court-mandated mediators.

C. Single Point of Contact.

1. Servicer shall establish an easily accessible and reliable single point of contact ("SPOC") for each potentially-eligible first lien mortgage borrower so that the borrower has access to an employee of Servicer to obtain information throughout the loss mitigation, loan modification and foreclosure processes.
2. Servicer shall initially identify the SPOC to the borrower promptly after a potentially-eligible borrower requests loss mitigation assistance. Servicer shall provide one or more direct means of communication with the SPOC on loss mitigation-related correspondence with the borrower. Servicer shall promptly provide updated contact information to the borrower if the designated SPOC is reassigned, no longer employed by Servicer, or otherwise not able to act as the primary point of contact.
 - a. Servicer shall ensure that debtors in bankruptcy are assigned to a SPOC specially trained in bankruptcy issues.
3. The SPOC shall have primary responsibility for:
 - a. Communicating the options available to the borrower, the actions the borrower must take to be considered for these options and the status of Servicer's evaluation of the borrower for these options;
 - b. Coordinating receipt of all documents associated with loan modification or loss mitigation activities;
 - c. Being knowledgeable about the borrower's situation and current status in the delinquency/imminent default resolution process; and

- d. Ensuring that a borrower who is not eligible for MHA programs is considered for proprietary or other investor loss mitigation options.
4. The SPOC shall, at a minimum, provide the following services to borrowers:
 - a. Contact borrower and introduce himself/herself as the borrower's SPOC;
 - b. Explain programs for which the borrower is eligible;
 - c. Explain the requirements of the programs for which the borrower is eligible;
 - d. Explain program documentation requirements;
 - e. Provide basic information about the status of borrower's account, including pending loan modification applications, other loss mitigation alternatives, and foreclosure activity;
 - f. Notify borrower of missing documents and provide an address or electronic means for submission of documents by borrower in order to complete the loan modification application;
 - g. Communicate Servicer's decision regarding loan modification applications and other loss mitigation alternatives to borrower in writing;
 - h. Assist the borrower in pursuing alternative non-foreclosure options upon denial of a loan modification;
 - i. If a loan modification is approved, call borrower to explain the program;
 - j. Provide information regarding credit counseling where necessary;
 - k. Help to clear for borrower any internal processing requirements; and
 - l. Have access to individuals with the ability to stop foreclosure proceedings when necessary to comply with the MHA Program or this Agreement.
5. The SPOC shall remain assigned to borrower's account and available to borrower until such time as Servicer determines in good faith that all loss mitigation options have been exhausted, borrower's account becomes current or, in the case of a borrower in bankruptcy, the borrower has exhausted all loss mitigation options for which the borrower is potentially eligible and has applied.

6. Servicer shall ensure that a SPOC can refer and transfer a borrower to an appropriate supervisor upon request of the borrower.
 7. Servicer shall ensure that relevant records relating to borrower's account are promptly available to the borrower's SPOC, so that the SPOC can timely, adequately and accurately inform the borrower of the current status of loss mitigation, loan modification, and foreclosure activities.
 8. Servicer shall designate one or more management level employees to be the primary contact for the Attorneys General, state financial regulators, the Executive Office of U.S. Trustee, each regional office of the U.S. Trustee, and federal regulators for communication regarding complaints and inquiries from individual borrowers who are in default and/or have applied for loan modifications. Servicer shall provide a written acknowledgment to all such inquiries within 10 business days. Servicer shall provide a substantive written response to all such inquiries within 30 days. Servicer shall provide relevant loan information to borrower and to Attorneys General, state financial regulators, federal regulators, the Executive Office of the U.S. Trustee, and each U.S. Trustee upon written request and if properly authorized. A written complaint filed by a borrower and forwarded by a state attorney general or financial regulatory agency to Servicer shall be deemed to have proper authorization.
 9. Servicer shall establish and make available to Chapter 13 trustees a toll-free number staffed by persons trained in bankruptcy to respond to inquiries from Chapter 13 trustees.
- D. Loss Mitigation Communications with Borrowers.
1. Servicer shall commence outreach efforts to communicate loss mitigation options for first lien mortgage loans to all potentially eligible delinquent borrowers (other than those in bankruptcy) beginning on timelines that are in accordance with HAMP borrower solicitation guidelines set forth in the MHA Handbook version 3.2, Chapter II, Section 2.2, regardless of whether the borrower is eligible for a HAMP modification. Servicer shall provide borrowers with notices that include contact information for national or state foreclosure assistance hotlines and state housing counseling resources, as appropriate. The use by Servicer of nothing more than prerecorded automatic messages in loss mitigation communications with borrowers shall not be sufficient in those instances in which it fails to result in contact between the borrower and one of Servicer's loss mitigation specialists. Servicer shall conduct affirmative outreach efforts to inform delinquent second lien borrowers (other than those in bankruptcy)

about the availability of payment reduction options. The foregoing notwithstanding, Servicer shall have no obligation to solicit borrowers who are in bankruptcy.

2. Servicer shall disclose and provide accurate information to borrowers relating to the qualification process and eligibility factors for loss mitigation programs.
3. Servicer shall communicate, at the written request of the borrower, with the borrower's authorized representatives, including housing counselors. Servicer shall communicate with representatives from state attorneys general and financial regulatory agencies acting upon a written complaint filed by the borrower and forwarded by the state attorney general or financial regulatory agency to Servicer. When responding to the borrower regarding such complaint, Servicer shall include the applicable state attorney general on all correspondence with the borrower regarding such complaint.
4. Servicer shall cease all collection efforts while the borrower (i) is making timely payments under a trial loan modification or (ii) has submitted a complete loan modification application, and a modification decision is pending. Notwithstanding the above, Servicer reserves the right to contact a borrower to gather required loss mitigation documentation or to assist a borrower with performance under a trial loan modification plan.
5. Servicer shall consider partnering with third parties, including national chain retailers, and shall consider the use of select bank branches affiliated with Servicer, to set up programs to allow borrowers to copy, fax, scan, transmit by overnight delivery, or mail or email documents to Servicer free of charge.
6. Within five business days after referral to foreclosure, the Servicer (including any attorney (or trustee) conducting foreclosure proceedings at the direction of the Servicer) shall send a written communication ("Post Referral to Foreclosure Solicitation Letter") to the borrower that includes clear language that:
 - a. The Servicer may have sent to the borrower one or more borrower solicitation communications;
 - b. The borrower can still be evaluated for alternatives to foreclosure even if he or she had previously shown no interest;
 - c. The borrower should contact the Servicer to obtain a loss mitigation application package;
 - d. The borrower must submit a loan modification application

to the Servicer to request consideration for available foreclosure prevention alternatives;

- e. Provides the Servicer's contact information for submitting a complete loan modification application, including the Servicer's toll-free number; and
- f. Unless the form of letter is otherwise specified by investor directive or state law or the borrower is not eligible for an appeal under paragraph IV.G.3.a, states that if the borrower is contemplating or has pending an appeal of an earlier denial of a loan modification application, that he or she may submit a loan modification application in lieu of his or her appeal within 30 days after the Post Referral to Foreclosure Solicitation Letter.

E. Development of Loan Portals.

- 1. Servicer shall develop or contract with a third-party vendor to develop an online portal linked to Servicer's primary servicing system where borrowers can check, at no cost, the status of their first lien loan modifications.
- 2. Servicer shall design portals that may, among other things:
 - a. Enable borrowers to submit documents electronically;
 - b. Provide an electronic receipt for any documents submitted;
 - c. Provide information and eligibility factors for proprietary loan modification and other loss mitigation programs; and
 - d. Permit Servicer to communicate with borrowers to satisfy any written communications required to be provided by Servicer, if borrowers submit documents electronically.
- 3. Servicer shall participate in the development and implementation of a neutral, nationwide loan portal system linked to Servicer's primary servicing system, such as Hope LoanPort to enhance communications with housing counselors, including using the technology used for the Borrower Portal, and containing similar features to the Borrower Portal.
- 4. Servicer shall update the status of each pending loan modification on these portals at least every 10 business days and ensure that each portal is updated on such a schedule as to maintain consistency.

F. Loan Modification Timelines.

- 1. Servicer shall provide written acknowledgement of the receipt of documentation submitted by the borrower in connection with a first lien loan modification application within 3 business days. In

its initial acknowledgment, Servicer shall briefly describe the loan modification process and identify deadlines and expiration dates for submitted documents.

2. Servicer shall notify borrower of any known deficiency in borrower's initial submission of information, no later than 5 business days after receipt, including any missing information or documentation required for the loan modification to be considered complete.
 3. Subject to section IV.B, Servicer shall afford borrower 30 days from the date of Servicer's notification of any missing information or documentation to supplement borrower's submission of information prior to making a determination on whether or not to grant an initial loan modification.
 4. Servicer shall review the complete first lien loan modification application submitted by borrower and shall determine the disposition of borrower's trial or preliminary loan modification request no later than 30 days after receipt of the complete loan modification application, absent compelling circumstances beyond Servicer's control.
 5. Servicer shall implement processes to ensure that second lien loan modification requests are evaluated on a timely basis. When a borrower qualifies for a second lien loan modification after a first lien loan modification in accordance with Section 2.c.i of the General Framework for Consumer Relief Provisions, the Servicer of the second lien loan shall (absent compelling circumstances beyond Servicer's control) send loan modification documents to borrower no later than 45 days after the Servicer receives official notification of the successful completion of the related first lien loan modification and the essential terms.
 6. For all proprietary first lien loan modification programs, Servicer shall allow properly submitted borrower financials to be used for 90 days from the date the documents are received, unless Servicer learns that there has been a material change in circumstances or unless investor requirements mandate a shorter time frame.
 7. Servicer shall notify borrowers of the final denial of any first lien loan modification request within 10 business days of the denial decision. The notification shall be in the form of the non-approval notice required in paragraph IV.G.1 below.
- G. Independent Evaluation of First Lien Loan Modification Denials.
1. Except when evaluated as provided in paragraphs IV.B.8 or IV.B.9, Servicer's initial denial of an eligible borrower's request for first lien loan modification following the submission of a

complete loan modification application shall be subject to an independent evaluation. Such evaluation shall be performed by an independent entity or a different employee who has not been involved with the particular loan modification.

2. Denial Notice.

- a. When a first lien loan modification is denied after independent review, Servicer shall send a written non-approval notice to the borrower identifying the reasons for denial and the factual information considered. The notice shall inform the borrower that he or she has 30 days from the date of the denial letter declination to provide evidence that the eligibility determination was in error.
- b. If the first lien modification is denied because disallowed by investor, Servicer shall disclose in the written non-approval notice the name of the investor and summarize the reasons for investor denial.
- c. For those cases where a first lien loan modification denial is the result of an NPV calculation, Servicer shall provide in the written non-approval notice the monthly gross income and property value used in the calculation.

3. Appeal Process.

- a. After the automatic review in paragraph IV.G.1 has been completed and Servicer has issued the written non-approval notice, in the circumstances described in the first sentences of paragraphs IV.B.3, IV.B.5 or IV.B.7, except when otherwise required by federal or state law or investor directives, borrowers shall have 30 days to request an appeal and obtain an independent review of the first lien loan modification denial in accordance with the terms of this Agreement. Servicer shall ensure that the borrower has 30 days from the date of the written non-approval notice to provide information as to why Servicer's determination of eligibility for a loan modification was in error, unless the reason for non-approval is (1) ineligible mortgage, (2) ineligible property, (3) offer not accepted by borrower or request withdrawn, or (4) the loan was previously modified.
- b. For those cases in which the first lien loan modification denial is the result of an NPV calculation, if a borrower disagrees with the property value used by Servicer in the NPV test, the borrower can request that a full appraisal be conducted of the property by an independent licensed appraiser (at borrower expense) consistent with HAMP

directive 10-15. Servicer shall comply with the process set forth in HAMP directive 10-15, including using such value in the NPV calculation.

- c. Servicer shall review the information submitted by borrower and use its best efforts to communicate the disposition of borrower's appeal to borrower no later than 30 days after receipt of the information.
- d. If Servicer denies borrower's appeal, Servicer's appeal denial letter shall include a description of other available loss mitigation, including short sales and deeds in lieu of foreclosure.

H. General Loss Mitigation Requirements.

- 1. Servicer shall maintain adequate staffing and systems for tracking borrower documents and information that are relevant to foreclosure, loss mitigation, and other Servicer operations. Servicer shall make periodic assessments to ensure that its staffing and systems are adequate.
- 2. Servicer shall maintain adequate staffing and caseload limits for SPOCs and employees responsible for handling foreclosure, loss mitigation and related communications with borrowers and housing counselors. Servicer shall make periodic assessments to ensure that its staffing and systems are adequate.
- 3. Servicer shall establish reasonable minimum experience, educational and training requirements for loss mitigation staff.
- 4. Servicer shall document electronically key actions taken on a foreclosure, loan modification, bankruptcy, or other servicing file, including communications with the borrower.
- 5. Servicer shall not adopt compensation arrangements for its employees that encourage foreclosure over loss mitigation alternatives.
- 6. Servicer shall not make inaccurate payment delinquency reports to credit reporting agencies when the borrower is making timely reduced payments pursuant to a trial or other loan modification agreement. Servicer shall provide the borrower, prior to entering into a trial loan modification, with clear and conspicuous written information that adverse credit reporting consequences may result from the borrower making reduced payments during the trial period.
- 7. Where Servicer grants a loan modification, Servicer shall provide borrower with a copy of the fully executed loan modification agreement within 45 days of receipt of the executed copy from the

borrower. If the modification is not in writing, Servicer shall provide the borrower with a written summary of its terms, as promptly as possible, within 45 days of the approval of the modification.

8. Servicer shall not instruct, advise or recommend that borrowers go into default in order to qualify for loss mitigation relief.
 9. Servicer shall not discourage borrowers from working or communicating with legitimate non-profit housing counseling services.
 10. Servicer shall not, in the ordinary course, require a borrower to waive or release claims and defenses as a condition of approval for a loan modification program or other loss mitigation relief. However, nothing herein shall preclude Servicer from requiring a waiver or release of claims and defenses with respect to a loan modification offered in connection with the resolution of a contested claim, when the borrower would not otherwise be qualified for the loan modification under existing Servicer programs.
 11. Servicer shall not charge borrower an application fee in connection with a request for a loan modification. Servicer shall provide borrower with a pre-paid overnight envelope or pre-paid address label for return of a loan modification application.
 12. Notwithstanding any other provision of this Agreement, and to minimize the risk of borrowers submitting multiple loss mitigation requests for the purpose of delay, Servicer shall not be obligated to evaluate requests for loss mitigation options from (a) borrowers who have already been evaluated or afforded a fair opportunity to be evaluated consistent with the requirements of HAMP or proprietary modification programs, or (b) borrowers who were evaluated after the date of implementation of this Agreement, consistent with this Agreement, unless there has been a material change in the borrower's financial circumstances that is documented by borrower and submitted to Servicer.
- I. Proprietary First Lien Loan Modifications.
1. Servicer shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete first lien loan modification application, and key eligibility factors for all proprietary loan modifications.
 2. Servicer shall design proprietary first lien loan modification programs that are intended to produce sustainable modifications according to investor guidelines and previous results. Servicer

shall design these programs with the intent of providing affordable payments for borrowers needing longer term or permanent assistance.

3. Servicer shall track outcomes and maintain records regarding characteristics and performance of proprietary first lien loan modifications. Servicer shall provide a description of modification waterfalls, eligibility criteria, and modification terms, on a publicly-available website.
4. Servicer shall not charge any application or processing fees for proprietary first lien loan modifications.

J. Proprietary Second Lien Loan Modifications.

1. Servicer shall make publicly available information on its qualification processes, all required documentation and information necessary for a complete second lien modification application.
2. Servicer shall design second lien modification programs with the intent of providing affordable payments for borrowers needing longer term or permanent assistance.
3. Servicer shall not charge any application or processing fees for second lien modifications.
4. When an eligible borrower with a second lien submits all required information for a second lien loan modification and the modification request is denied, Servicer shall promptly send a written non-approval notice to the borrower.

K. Short Sales.

1. Servicer shall make publicly available information on general requirements for the short sale process.
2. Servicer shall consider appropriate monetary incentives to underwater borrowers to facilitate short sale options.
3. Servicer shall develop a cooperative short sale process which allows the borrower the opportunity to engage with Servicer to pursue a short sale evaluation prior to putting home on the market.
4. Servicer shall send written confirmation of the borrower's first request for a short sale to the borrower or his or her agent within 10 business days of receipt of the request and proper written authorization from the borrower allowing Servicer to communicate with the borrower's agent. The confirmation shall include basic information about the short sale process and Servicer's requirements, and will state clearly and conspicuously that the

Servicer may demand a deficiency payment if such deficiency claim is permitted by applicable law.

5. Servicer shall send borrower at borrower's address of record or to borrower's agent timely written notice of any missing required documents for consideration of short sale within 30 days of receiving borrower's request for a short sale.
6. Servicer shall review the short sale request submitted by borrower and communicate the disposition of borrower's request no later than 30 days after receipt of all required information and third-party consents.
7. If the short sale request is accepted, Servicer shall contemporaneously notify the borrower whether Servicer or investor will demand a deficiency payment or related cash contribution and the approximate amount of that deficiency, if such deficiency obligation is permitted by applicable law. If the short sale request is denied, Servicer shall provide reasons for the denial in the written notice. If Servicer waives a deficiency claim, it shall not sell or transfer such claim to a third-party debt collector or debt buyer for collection.

L. Loss Mitigation During Bankruptcy.

1. Servicer may not deny any loss mitigation option to eligible borrowers on the basis that the borrower is a debtor in bankruptcy so long as borrower and any trustee cooperates in obtaining any appropriate approvals or consents.
2. Servicer shall, to the extent reasonable, extend trial period loan modification plans as necessary to accommodate delays in obtaining bankruptcy court approvals or receiving full remittance of debtor's trial period payments that have been made to a chapter 13 trustee. In the event of a trial period extension, the debtor must make a trial period payment for each month of the trial period, including any extension month.
3. When the debtor is in compliance with a trial period or permanent loan modification plan, Servicer will not object to confirmation of the debtor's chapter 13 plan, move to dismiss the pending bankruptcy case, or file a MRS solely on the basis that the debtor paid only the amounts due under the trial period or permanent loan modification plan, as opposed to the non-modified mortgage payments.

M. Transfer of Servicing of Loans Pending for Permanent Loan Modification.

1. Ordinary Transfer of Servicing from Servicer to Successor Servicer or Subservicer.

- a. At time of transfer or sale, Servicer shall inform successor servicer (including a subservicer) whether a loan modification is pending.
 - b. Any contract for the transfer or sale of servicing rights shall obligate the successor servicer to accept and continue processing pending loan modification requests.
 - c. Any contract for the transfer or sale of servicing rights shall obligate the successor servicer to honor trial and permanent loan modification agreements entered into by prior servicer.
 - d. Any contract for transfer or sale of servicing rights shall designate that borrowers are third party beneficiaries under paragraphs IV.M.1.b and IV.M.1.c, above.
2. Transfer of Servicing to Servicer. When Servicer acquires servicing rights from another servicer, Servicer shall ensure that it will accept and continue to process pending loan modification requests from the prior servicer, and that it will honor trial and permanent loan modification agreements entered into by the prior servicer.

V. PROTECTIONS FOR MILITARY PERSONNEL.

- A. Servicer shall comply with all applicable provisions of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. Appx. § 501 *et seq.*, and any applicable state law offering protections to servicemembers, and shall engage an independent consultant whose duties shall include a review of (a) all foreclosures in which an SCRA-eligible servicemember is known to have been an obligor or mortgagor, and (b) a sample of foreclosure actions (which sample will be appropriately enlarged to the extent Servicer identifies material exceptions), from January 1, 2009 to December 31, 2010 to determine whether the foreclosures were in compliance with the SCRA. Servicer shall remediate all monetary damages in compliance with the banking regulator Consent Orders.
- B. When a borrower states that he or she is or was within the preceding 9 months (or the then applicable statutory period under the SCRA) in active military service or has received and is subject to military orders requiring him or her to commence active military service, Lender shall determine whether the borrower may be eligible for the protections of the SCRA or for the protections of the provisions of paragraph V.F. If Servicer determines the borrower is so eligible, Servicer shall, until Servicer determines that such customer is no longer protected by the SCRA,
 1. if such borrower is not entitled to a SPOC, route such customers to employees who have been specially trained about the protections of the SCRA to respond to such borrower's questions, or

2. if such borrower is entitled to a SPOC, designate as a SPOC for such borrower a person who has been specially trained about the protections of the SCRA (Servicemember SPOC).
- C. Servicer shall, in addition to any other reviews it may perform to assess eligibility under the SCRA, (i) before referring a loan for foreclosure, (ii) within seven days before a foreclosure sale, and (iii) the later of (A) promptly after a foreclosure sale and (B) within three days before the regularly scheduled end of any redemption period, determine whether the secured property is owned by a servicemember covered under SCRA by searching the Defense Manpower Data Center (DMDC) for evidence of SCRA eligibility by either (a) last name and social security number, or (b) last name and date of birth.
- D. When a servicemember provides written notice requesting protection under the SCRA relating to interest rate relief, but does not provide the documentation required by Section 207(b)(1) of the SCRA (50 USC Appx. § 527(b)(1)), Servicer shall accept, in lieu of the documentation required by Section 207(b)(1) of the SCRA, a letter on official letterhead from the servicemember's commanding officer including a contact telephone number for confirmation:
1. Addressed in such a way as to signify that the commanding officer recognizes that the letter will be relied on by creditors of the servicemember (a statement that the letter is intended to be relied upon by the Servicemember's creditors would satisfy this requirement);
 2. Setting forth the full name (including middle initial, if any), Social Security number and date of birth of the servicemember;
 3. Setting forth the home address of the servicemember; and
 4. Setting forth the date of the military orders marking the beginning of the period of military service of the servicemember and, as may be applicable, that the military service of the servicemember is continuing or the date on which the military service of the servicemember ended.
- E. Servicer shall notify customers who are 45 days delinquent that, if they are a servicemember, (a) they may be entitled to certain protections under the SCRA regarding the servicemember's interest rate and the risk of foreclosure, and (b) counseling for covered servicemembers is available at agencies such as Military OneSource, Armed Forces Legal Assistance, and a HUD-certified housing counselor. Such notice shall include a toll-free number that servicemembers may call to be connected to a person who has been specially trained about the protections of the SCRA to respond to such borrower's questions. Such telephone number shall either connect directly to such a person or afford a caller the ability to identify

him- or herself as an eligible servicemember and be routed to such persons. Servicers hereby confirm that they intend to take reasonable steps to ensure the dissemination of such toll-free number to customers who may be eligible servicemembers.

- F. Irrespective of whether a mortgage obligation was originated before or during the period of a servicemember's military service, if, based on the determination described in the last sentence and subject to Applicable Requirements, a servicemember's military orders (or any letter complying with paragraph V.D), together with any other documentation satisfactory to the Servicer, reflects that the servicemember is (a) eligible for Hostile Fire/Imminent Danger Pay and (b) serving at a location (i) more than 750 miles from the location of the secured property or (ii) outside of the United States, then to the extent consistent with Applicable Requirements, the Servicer shall not sell, foreclose, or seize a property for a breach of an obligation on real property owned by a servicemember that is secured by mortgage, deed of trust, or other security in the nature of a mortgage, during, or within 9 months after, the period in which the servicemember is eligible for Hostile Fire/Imminent Danger Pay, unless either (i) Servicer has obtained a court order granted before such sale, foreclosure, or seizure with a return made and approved by the court, or (ii) if made pursuant to an agreement as provided in section 107 of the SCRA (50 U.S.C. Appx. § 517). Unless a servicemember's eligibility for the protection under this paragraph can be fully determined by a proper search of the DMDC website, Servicer shall only be obligated under this provision if it is able to determine, based on a servicemember's military orders (or any letter complying with paragraph V.D), together with any other documentation provided by or on behalf of the servicemember that is satisfactory to the Servicer, that the servicemember is (a) eligible for Hostile Fire/Imminent Danger Pay and (b) serving at a location (i) more than 750 miles from the location of the secured property or (ii) outside of the United States.
- G. Servicer shall not require a servicemember to be delinquent to qualify for a short sale, loan modification, or other loss mitigation relief if the servicemember is suffering financial hardship and is otherwise eligible for such loss mitigation. Subject to Applicable Requirements, for purposes of assessing financial hardship in relation to (i) a short sale or deed in lieu transaction, Servicer will take into account whether the servicemember is, as a result of a permanent change of station order, required to relocate even if such servicemember's income has not been decreased, so long as the servicemember does not have sufficient liquid assets to make his or her monthly mortgage payments, or (ii) a loan modification, Servicer will take into account whether the servicemember is, as a result of his or her under military orders required to relocate to a new duty station at least seventy five mile from his or her residence/secured property or to reside at a location other than the residence/secured property, and accordingly is

unable personally to occupy the residence and (a) the residence will continue to be occupied by his or her dependents, or (b) the residence is the only residential property owned by the servicemember.

- H. Servicer shall not make inaccurate reports to credit reporting agencies when a servicemember, who has not defaulted before relocating under military orders to a new duty station, obtains a short sale, loan modification, or other loss mitigation relief.

VI. RESTRICTIONS ON SERVICING FEES.

A. General Requirements.

1. All default, foreclosure and bankruptcy-related service fees, including third-party fees, collected from the borrower by Servicer shall be bona fide, reasonable in amount, and disclosed in detail to the borrower as provided in paragraphs I.B.10 and VI.B.1.

B. Specific Fee Provisions.

1. Schedule of Fees. Servicer shall maintain and keep current a schedule of common non-state specific fees or ranges of fees that may be charged to borrowers by or on behalf of Servicer. Servicer shall make this schedule available on its website and to the borrower or borrower's authorized representative upon request. The schedule shall identify each fee, provide a plain language explanation of the fee, and state the maximum amount of the fee or how the fee is calculated or determined.
2. Servicer may collect a default-related fee only if the fee is for reasonable and appropriate services actually rendered and one of the following conditions is met:
- a. the fee is expressly or generally authorized by the loan instruments and not prohibited by law or this Agreement;
 - b. the fee is permitted by law and not prohibited by the loan instruments or this Agreement; or
 - c. the fee is not prohibited by law, this Agreement or the loan instruments and is a reasonable fee for a specific service requested by the borrower that is collected only after clear and conspicuous disclosure of the fee is made available to the borrower.
3. Attorneys' Fees. In addition to the limitations in paragraph VI.B.2 above, attorneys' fees charged in connection with a foreclosure action or bankruptcy proceeding shall only be for work actually performed and shall not exceed reasonable and customary fees for such work. In the event a foreclosure action is terminated prior to the final judgment and/or sale for a loss mitigation option, a

reinstatement, or payment in full, the borrower shall be liable only for reasonable and customary fees for work actually performed.

4. Late Fees.

- a. Servicer shall not collect any late fee or delinquency charge when the only delinquency is attributable to late fees or delinquency charges assessed on an earlier payment, and the payment is otherwise a full payment for the applicable period and is paid on or before its due date or within any applicable grace period.
- b. Servicer shall not collect late fees (i) based on an amount greater than the past due amount; (ii) collected from the escrow account or from escrow surplus without the approval of the borrower; or (iii) deducted from any regular payment.
- c. Servicer shall not collect any late fees for periods during which (i) a complete loan modification application is under consideration; (ii) the borrower is making timely trial modification payments; or (iii) a short sale offer is being evaluated by Servicer.

C. Third-Party Fees.

1. Servicer shall not impose unnecessary or duplicative property inspection, property preservation or valuation fees on the borrower, including, but not limited to, the following:
 - a. No property preservation fees shall be imposed on eligible borrowers who have a pending application with Servicer for loss mitigation relief or are performing under a loss mitigation program, unless Servicer has a reasonable basis to believe that property preservation is necessary for the maintenance of the property, such as when the property is vacant or listed on a violation notice from a local jurisdiction;
 - b. No property inspection fee shall be imposed on a borrower any more frequently than the timeframes allowed under GSE or HUD guidelines unless Servicer has identified specific circumstances supporting the need for further property inspections; and
 - c. Servicer shall be limited to imposing property valuation fees (*e.g.*, BPO) to once every 12 months, unless other valuations are requested by the borrower to facilitate a short sale or to support a loan modification as outlined in paragraph IV.G.3.a, or required as part of the default or

foreclosure valuation process.

2. Default, foreclosure and bankruptcy-related services performed by third parties shall be at reasonable market value.
3. Servicer shall not collect any fee for default, foreclosure or bankruptcy-related services by an affiliate unless the amount of the fee does not exceed the lesser of (a) any fee limitation or allowable amount for the service under applicable state law, and (b) the market rate for the service. To determine the market rate, Servicer shall obtain annual market reviews of its affiliates' pricing for such default and foreclosure-related services; such market reviews shall be performed by a qualified, objective, independent third-party professional using procedures and standards generally accepted in the industry to yield accurate and reliable results. The independent third-party professional shall determine in its market survey the price actually charged by third-party affiliates and by independent third party vendors.
4. Servicer shall be prohibited from collecting any unearned fee, or giving or accepting referral fees in relation to third-party default or foreclosure-related services.
5. Servicer shall not impose its own mark-ups on Servicer initiated third-party default or foreclosure-related services.

D. Certain Bankruptcy Related Fees.

1. Servicer must not collect any attorney's fees or other charges with respect to the preparation or submission of a POC or MRS document that is withdrawn or denied, or any amendment thereto that is required, as a result of a substantial misstatement by Servicer of the amount due.
2. Servicer shall not collect late fees due to delays in receiving full remittance of debtor's payments, including trial period or permanent modification payments as well as post-petition conduit payments in accordance with 11 U.S.C. § 1322(b)(5), that debtor has timely (as defined by the underlying Chapter 13 plan) made to a chapter 13 trustee.

VII. FORCE-PLACED INSURANCE.

A. General Requirements for Force-Placed Insurance.

1. Servicer shall not obtain force-placed insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. For escrowed accounts, Servicer shall continue to advance payments for the homeowner's existing policy, unless the borrower or insurance company cancels the existing policy.

For purposes of this section VII, the term “force-placed insurance” means hazard insurance coverage obtained by Servicer when the borrower has failed to maintain or renew hazard or wind insurance on such property as required of the borrower under the terms of the mortgage.

2. Servicer shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this section VII have been met.
3. Servicer shall not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless:
 - a. Servicer has sent, by first-class mail, a written notice to the borrower containing:
 - i. A reminder of the borrower’s obligation to maintain hazard insurance on the property securing the federally related mortgage;
 - ii. A statement that Servicer does not have evidence of insurance coverage of such property;
 - iii. A clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage;
 - iv. A statement that Servicer may obtain such coverage at the borrower’s expense if the borrower does not provide such demonstration of the borrower’s existing coverage in a timely manner;
 - v. A statement that the cost of such coverage may be significantly higher than the cost of the homeowner’s current coverage;
 - vi. For first lien loans on Servicer’s primary servicing system, a statement that, if the borrower desires to maintain his or her voluntary policy, Servicer will offer an escrow account and advance the premium due on the voluntary policy if the borrower: (a) accepts the offer of the escrow account; (b) provides a copy of the invoice from the voluntary carrier; (c) agrees in writing to reimburse the escrow advances through regular escrow payments; (d) agrees to escrow to both repay the advanced premium and to pay for the future premiums necessary to maintain any required insurance policy; and (e) agrees Servicer shall manage the escrow account in

- accordance with the loan documents and with state and federal law; and
- vii. A statement, in the case of single interest coverage, that the coverage may only protect the mortgage holder's interest and not the homeowner's interest.
 - b. Servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under paragraph VII.A.3.a that contains all the information described in each clause of such paragraph.
 - c. Servicer has not received from the borrower written confirmation of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under paragraph VII.A.3.b was sent by Servicer.
4. Servicer shall accept any reasonable form of written confirmation from a borrower or the borrower's insurance agent of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the insurance company or agent.
 5. Servicer shall not place hazard or wind insurance on a mortgaged property, or require a borrower to obtain or maintain such insurance, in excess of the greater of replacement value, last-known amount of coverage or the outstanding loan balance, unless required by Applicable Requirements, or requested by borrower in writing.
 6. Within 15 days of the receipt by Servicer of evidence of a borrower's existing insurance coverage, Servicer shall:
 - a. Terminate the force-placed insurance; and
 - b. Refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower's insurance coverage and the force placed insurance coverage were each in effect, and any related fees charged to the consumer's account with respect to the force-placed insurance during such period.
 7. Servicer shall make reasonable efforts to work with the borrower to continue or reestablish the existing homeowner's policy if there is a lapse in payment and the borrower's payments are escrowed.
 8. Any force-placed insurance policy must be purchased for a commercially reasonable price.

9. No provision of this section VII shall be construed as prohibiting Servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

VIII. GENERAL SERVICER DUTIES AND PROHIBITIONS.

A. Measures to Deter Community Blight.

1. Servicer shall develop and implement policies and procedures to ensure that REO properties do not become blighted.
2. Servicer shall develop and implement policies and procedures to enhance participation and coordination with state and local land bank programs, neighborhood stabilization programs, nonprofit redevelopment programs, and other anti-blight programs, including those that facilitate discount sale or donation of low-value REO properties so that they can be demolished or salvaged for productive use.
3. As indicated in I.A.18, Servicer shall (a) inform borrower that if the borrower continues to occupy the property, he or she has responsibility to maintain the property, and an obligation to continue to pay taxes owed, until a sale or other title transfer action occurs; and (b) request that if the borrower wishes to abandon the property, he or she contact Servicer to discuss alternatives to foreclosure under which borrower can surrender the property to Servicer in exchange for compensation.
4. When the Servicer makes a determination not to pursue foreclosure action on a property with respect to a first lien mortgage loan, Servicer shall:
 - a. Notify the borrower of Servicer's decision to release the lien and not pursue foreclosure, and inform borrower about his or her right to occupy the property until a sale or other title transfer action occurs; and
 - b. Notify local authorities, such as tax authorities, courts, or code enforcement departments, when Servicer decides to release the lien and not pursue foreclosure.

B. Tenants' Rights.

1. Servicer shall comply with all applicable state and federal laws governing the rights of tenants living in foreclosed residential properties.
2. Servicer shall develop and implement written policies and procedures to ensure compliance with such laws.

IX. GENERAL PROVISIONS, DEFINITIONS, AND IMPLEMENTATION.

A. Applicable Requirements.

1. The servicing standards and any modifications or other actions taken in accordance with the servicing standards are expressly subject to, and shall be interpreted in accordance with, (a) applicable federal, state and local laws, rules and regulations, including, but not limited to, any requirements of the federal banking regulators, (b) the terms of the applicable mortgage loan documents, (c) Section 201 of the Helping Families Save Their Homes Act of 2009, and (d) the terms and provisions of the Servicer Participation Agreement with the Department of Treasury, any servicing agreement, subservicing agreement under which Servicer services for others, special servicing agreement, mortgage or bond insurance policy or related agreement or requirements to which Servicer is a party and by which it or its servicing is bound pertaining to the servicing or ownership of the mortgage loans, including without limitation the requirements, binding directions, or investor guidelines of the applicable investor (such as Fannie Mae or Freddie Mac), mortgage or bond insurer, or credit enhancer (collectively, the “Applicable Requirements”).
2. In the event of a conflict between the requirements of the Agreement and the Applicable Requirements with respect to any provision of this Agreement such that the Servicer cannot comply without violating Applicable Requirements or being subject to adverse action, including fines and penalties, Servicer shall document such conflicts and notify the Monitor and the Monitoring Committee that it intends to comply with the Applicable Requirements to the extent necessary to eliminate the conflict. Any associated Metric provided for in the Enforcement Terms will be adjusted accordingly.

B. Definitions.

1. In each instance in this Agreement in which Servicer is required to ensure adherence to, or undertake to perform certain obligations, it is intended to mean that Servicer shall: (a) authorize and adopt such actions on behalf of Servicer as may be necessary for Servicer to perform such obligations and undertakings; (b) follow up on any material non-compliance with such actions in a timely and appropriate manner; and (c) require corrective action be taken in a timely manner of any material non-compliance with such obligations.
2. References to Servicer shall mean Bank of America, N.A. and shall include Servicer’s successors and assignees in the event of a sale of all or substantially all of the assets of Servicer or of

Servicer's division(s) or major business unit(s) that are engaged as a primary business in customer-facing servicing of residential mortgages on owner-occupied properties. The provisions of this Agreement shall not apply to those divisions or major business units of Servicer that are not engaged as a primary business in customer-facing servicing of residential mortgages on owner-occupied one-to-four family properties on its own behalf or on behalf of investors.

MEMORANDUM

TO: ADVISORY COMMITTEE ON BANKRUPTCY RULES
FROM: CHAPTER 13 FORM PLAN WORKING GROUP
RE: NATIONAL CHAPTER 13 FORM PLAN PROJECT
DATE: AUGUST 22, 2012

In the course of preparing a national chapter 13 form plan, the Working Group concluded that amendments to bankruptcy rules would be helpful—if not essential—to an effective national form. This memorandum discusses the Working Group’s recommendations for rule amendments and the group’s proposal for the timing of formal consideration of these amendments by the Advisory Committee. A draft model plan and redlined version of the proposed rule amendments, showing all changes made from the current rules text, are set out as an appendix.

The Timing of Proposed Amendments

The Working Group has made substantial progress in drafting a model plan and proposed rule amendments. The Working Group brings them to the Advisory Committee at this meeting for a preliminary review. Subject to the approval of the Consumer and Forms Subcommittees, the Advisory Committee will be asked at the spring meeting to request the Standing Committee to publish the rule amendments for public comment in August 2013.

The process of drafting language for the rules discussed in this memorandum and developing the model plan has revealed the importance of seeking additional input before publication. Following the fall meeting, the Working Group would like to solicit the input of a broad cross section of interested parties. One potential approach for doing so would be modeled on the process used in the Forms Modernization Project—that is, seeking the views of lawyers (for debtors and creditors), trustees, and judges in workshop-style sessions. The Working Group

therefore requests the Advisory Committee's approval to solicit input from interested parties about the specific rule amendment language and draft model plan.

Rule Changes Proposed by the Working Group

1. Rule 3002

One of the major functions of a chapter 13 plan is dealing with secured claims. In order for a debtor or the standing trustee to have the relevant information about a secured claim, including the total claim amount and the amount of any claimed arrearage, it would be helpful to have a proof of claim from each secured creditor filed before the confirmation hearing. That way, any differences between the debtor's plan and the proof of claim could be addressed at the confirmation hearing.

A proposed rule amendment requiring proofs of claim to be filed by secured creditors was considered by the Advisory Committee meeting in March. Although general approval of the rule change was expressed, the question of whether the change should apply in chapter 11 cases was referred to the Business Subcommittee. The Working Group's proposal as currently drafted would apply in all cases.

In addition to requiring that proofs of claim be filed by secured creditors under Rule 3002(a), the Working Group also recommends that the deadline for filing proofs of claim under Rule 3002(c)—which deals with claims in chapters 7, 12, and 13—be reduced from 90 days after the first date set for the § 341 meeting of creditors to 60 days after the filing of the petition. A different time period is set out for involuntary chapter 7 cases.

This change would set the filing deadline to occur before the chapter 13 confirmation hearing date established by § 1324(b) of the Code. That subsection generally requires the confirmation hearing to be between 20 and 45 days after the § 341 meeting, which, under Rule

2003(a), must be at least 21 days after the order for relief in chapter 13. Thus, the court could always set the confirmation hearing more than 60 days after the order for relief, the proposed general deadline for filing proofs of claim. The deadline would also result in the filing of claims before the hearing on confirmation of a chapter 12 plan, which must generally be filed within 90 days of the order for relief under § 1221. Governmental creditors would be excepted from the deadline, consistent with the limitation in § 502(b)(9) of the Code.

The Working Group did not initially suggest any amendment to the exceptions to the deadline set out in Rule 3002(c). After further consideration, however, the Working Group has proposed a limited exception for creditors who were not timely listed in the mailing list required by Rule 1007(a)(1) to contain the name and address of creditors included or to be included in the debtor's schedules.

The proposed language is as follows:

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. A secured creditor, unsecured creditor, and equity security holder must file a proof of claim or interest for the claim or interest to be allowed, except as provided in Rules 1019(3), 3003, 3004, and 3005. A lien that secures a claim against the debtor is not void due only to the failure of any entity to file a proof of claim.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a voluntary chapter 7 case, chapter 12 case, or chapter 13 case, a proof of claim is timely filed if it is filed not later than 60 days after the date of the filing of the petition, and in an involuntary chapter 7 case, a proof of claim is timely filed if it is filed not later than 90 days after the entry of the order for relief, except as follows:

* * *