

1. Any Chapter 13 debtor, including those in cases filed prior to the adoption of the program, may request to enter the program. It is available for all real property in which the debtor has an interest, not just homestead.
2. The debtor requests to enter the program by filing an “Initial Notice of Loan Modification Matter,” which is to be served on the matrix and allows for an objection period. If no party objects, the loan modification request proceeds without the entry of a court order. If there is an objection, the court determines whether the matter will proceed.
3. The responsibilities and duties of the various parties are set out in detail. There are deadlines for the initial submission of documents and information by the debtor, a deadline by which the lender may request additional documents and information, and a deadline by which the lender must make a decision on the loan modification request.
4. To avoid any delay in plan confirmation, the debtor can propose a plan that requires the debtor to continue making the regular monthly mortgage payment, but allowing the debtor to defer any arrearage cure.
5. Through the portal, the lender reviews the debtor’s submission, asks for additional information if needed, and announces its decision regarding the loan modification. The lender may deny the requested modification outright, approve it, or require trial payments. In the event the lender requires trial payments, the parties will file a Notice of Trial Period Payments. The Notice will also contain a disclosure of any other terms and conditions required by the lender. There is an opportunity for other parties to object to that Notice. Assuming, however, that there is no objection:
  - a. The Trustee will make the trial payments in a conduit program. There is a provision in the proposed program that if the debtor is current on plan payments or the payments due pursuant to a wage directive, any payment that the Trustee is directed to disburse to the lender is deemed current, even if not yet disbursed by the Trustee to the lender. This should avoid problems arising because of the timing of Trustee disbursements. There is also a provision that the Trustee will reserve the difference between the trial payments and the regular mortgage payments during the trial period. What happens to those reserved funds is described below, but the plan payment will not change during the trial period, even if the trial payments to the lender are lower than the regular mortgage payment, as is usually the case.
  - b. The debtor will make the trial payments in a non-conduit case. If someone objects to the trial payments, the court can determine whether the debtor will be allowed to make the trial payments. If the court approves those payments, it will enter an Order Approving Trial Period Payments. An order is entered only if an objection is filed. Otherwise, the process is automatic.
6. After the trial period, assuming the debtor has made the trial payments and is in compliance with any other terms and conditions required by the lender as set out in the Notice of Trial Period Payments, the debtor is entitled to a loan modification. Either the debtor or the lender can file a Motion to Approve Loan Modification Agreement. A few points regarding the Motion to Approve:
  - a. If the Motion to Approve is granted, the court will enter an Order Approving Loan Modification Agreement.
  - b. No plan modification is required for the loan modification to be approved. There are provisions in the program regarding when a plan modification is required, but it is not part of the process of having the court approve the loan modification.

- c. If the loan modification is approved, the information and the disclosures contained in the Motion to Approve Loan Modification Agreement will be deemed to be an amendment of the lender's proof of claim and a timely filing of a Notice of Payment Change and/or a Notice of Fees, Expenses, and Charges pursuant to Rule 3002.1.
  - d. If the loan modification is approved by the Court, the conduit Trustee will be authorized to make the disbursements set out in the Motion to Approve Loan Modification Agreement and to disburse the reserved funds (the difference between the trial payments and the regular monthly mortgage payments) to the debtor's counsel toward their fees.
7. If the lender denies the loan modification request, the conduit Trustee will be authorized to disburse the reserved funds to the lender. This is also true if the court denies the loan modification. In that case, the court will enter an Order Denying Approval of Loan Modification Agreement. This reservation of the funds prevents the debtor from falling further behind to the lender because of the trial period.
  8. There is a provision in the program regarding the proposed no-look fee to compensate debtor counsel for representing their client in the Loan Modification Program. The Committee researched the amount of counsel time typically involved in representing a debtor through this process. Uniformly, the answer we got was at least 10 hours.

The Committee noted that the mortgage lender representatives have been enthusiastic about the development of a uniform program for Texas and that there are several points contained in the program that are especially important to the lenders and which encourage their participation:

- a. Standardization of the procedure for the Debtor to enter a loan modification case so that the lender will know what to look for and respond to.
  - b. Reduction of court appearances and responsive pleadings – hearings and responses will be required only if there is a matter in controversy or issues to bring to the court's attention.
  - c. Standardization of the process for and reduction of the time needed to obtain approval of the loan modification by the Court and particularly being able to obtain that approval through the filing of a motion by the lender. As the lenders point out, they cannot file a plan modification pursuant to the provisions of §1329. Thus, the proposed program separates the loan modification approval process from a plan modification process, requiring the plan modification only as needed. This also speeds up the loan modification approval process since it will not be dependent on the approval of a plan modification.
  - d. Deeming the disclosures in the *Motion to Approve Loan Modification Agreement* as an amendment to the lender's proof of claim and as a Notice of Payment Change and a Notice of Fees, Expenses, and Charges so that the lender does not have to perform the additional work or pay additional attorney fees to file these documents when the parties are in agreement as to the terms of the loan modification and those terms/changes/charges are fully disclosed in the Motion.
9. There are costs associated with participating in the Loan Modification Program. For costs paid to the portal provider, the portal provider notifies the parties when the payment is due.
    - a. **Debtor attorney fees:** Attorneys who participate in the Loan Modification Program will receive a no-look fee plus a fixed amount of costs that will be paid through the debtor's plan pursuant to the Court's Local Rules and Standing Order.
      - i. If trial-period payments are disbursed by the Trustee (as opposed to being disbursed by the debtor directly to the lender) and there is a difference between the trial period payment and the regular mortgage payment, the difference is

reserved by the Trustee until the outcome of the loan modification request is determined. If the loan modification is granted, the difference on reserve is disbursed to the debtor's attorney and applied to the balance of the attorney's fee for representation during the loan modification process. If the loan modification is denied, the difference is disbursed to the mortgage lender.

- b. **Document Preparation Software Fee - \$40.00:** This fee allows the debtor to complete the standard forms needed for consideration of the loan modification request online. It also generates a checklist of any additional forms required by the lender, many of whom are already registered on the system and supporting documents that are required. This cost is paid directly to the portal provider. It is collected when the debtor uses the software.
- c. **Portal Submission Fee - \$40.00.** This cost is paid directly to the portal provider. It is collected when the initial package of documents is uploaded by the debtor.
- d. **Program Manager Fee - \$600.00 total,** but that is split between the debtor and the lender, so the debtor's portion is \$300.00. This cost is paid directly to the portal provider. The debtor's portion is collected when there is either (1) no objection to the Initial Notice of Loan Modification Matter (which is the point at which the loan modification request goes "live" or (2) if an objection is filed, at the time the court enters an order allowing the loan modification request to proceed.