

**IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION
AT AKRON**

IN RE: FACILITATION OF)	ADMINISTRATIVE ORDER NO. 10-01
MODIFICATION NEGOTIATIONS FOR)	
LOANS SECURED BY A FIRST)	
MORTGAGE ON A PRINCIPAL)	CHAPTER 13
RESIDENCE)	
)	
)	BANKRUPTCY JUDGE

Mortgage loan modification programs are becoming more available to debtor(s) in Chapter 13 cases. Based on discussions with the local bar, the Court believes that the entry of this Administrative Order will help to facilitate cost-effective discussions of mortgage loan modifications for Chapter 13 debtors. Because the mortgage loan modification process for Chapter 13 debtors is just beginning to emerge, however, the Court will reassess the utility of this Administrative Order within the next ninety (90) days. In the interim, the Court hereby notes:

1. Discussions between lenders' agents and debtor(s) of options available to debtor(s) to modify loans secured by a first mortgage on the debtor(s)' principal residence ("First Mortgage Loans") do not require relief from the automatic stay.
2. These discussions between the debtor(s) and lender can include voluntary programs undertaken by the lender, local and state loss mitigation programs, including mediation, federal programs addressing loan modifications, and other voluntary loan modification programs which may be initiated in the future by the mortgage industry or federal, state or local governmental agencies, or any combination of the foregoing.

3. This Administrative Order primarily addresses documentation of permanent modifications of First Mortgage Loans. With respect to a temporary Home Affordable Modification Program (HAMP) modification, however, the Court strongly suggests that the creditor file a “Notice of Post-Petition Change in Monthly Mortgage Payment” using the form attached to this Administrative Order. The form specifies the temporary payment amount, the property address, the monthly due date of the mortgage payment, and the address of the mortgage lender where payments should be submitted. If the trial period does not result in a permanent modification of the First Mortgage Loan, the creditor must file with the Court and serve on the debtor(s) the attached “Notice of Post Petition Change in Monthly Mortgage Payment (HAMP Loan Modification Ineligibility)” which specifies the new monthly payment amount, the property address, the monthly due date of the mortgage payment, and the address of the mortgage lender where payments are to be submitted. During any trial period, unless otherwise ordered by the Court, the Chapter 13 Trustee shall continue to pay mortgage arrearage claims which have been filed with the Court. If the debtor(s) is successful during the trial period and a permanent modification of the First Mortgage Loan is offered, the remainder of this Administrative Order sets forth the procedures to be followed in documenting those changes.
4. To effectuate, on a permanent basis, a modification of a First Mortgage Loan, the debtor(s) and lender must complete and file with the Court a copy of the attached order titled “Agreed Order Between Debtor(s) and Mortgage Lender Modifying the Automatic Stay Only for the Limited Purpose of Completing a Loan

Modification” (the “Agreed Order”). The template for this Agreed Order shall be available on the Akron page of the Court’s website at www.ohnb.uscourts.gov.

The Chapter 13 Trustee in Akron has also agreed that the template will be available on his website: www.chapter13info.com.

5. To finalize a modification of a First Mortgage Loan, the lender must provide documentation to the debtor(s) which specifies:
 - a. The terms of the modified First Mortgage Loan including
 - i. the principal amount of the modified First Mortgage Loan,
 - ii. the interest rate to be charged,
 - iii. a specification on whether the interest rate is fixed or adjustable,
 - iv. the terms in months of the modified First Mortgage Loan, and
 - v. the due date of the last payment due under the modified First Mortgage Loan;
 - b. The amount of the monthly payment and whether or not said payment includes an escrow for property taxes and insurance;
 - c. The date on which the debtor(s) must submit the first payment for the modified First Mortgage Loan;
 - d. The payment address for the lender and the appropriate account number of the modified First Mortgage Loan; and
 - e. The amount of fees, if any, being charged to the debtor(s) for the modification of the First Mortgage Loan.
6. The attachment to the Agreed Order of documentation of the lender’s offer to modify a First Mortgage Loan, absent an objection by the lender within 14 days

after the entry of the Agreed Order on the Court's docket, shall be deemed to be evidence of the lender's consent and agreement to the modification of the First Mortgage Loan.

7. Pursuant to Administrative Order 08-4, the Court is approving an additional "no look fee" for debtor(s)' counsel to assist the debtor(s) in modifying a First Mortgage Loan. This "no look fee" shall be in an amount not to exceed \$500. Debtor(s)' counsel is not limited to the amount of the "no look fee" and may seek additional fees by filing appropriate time itemizations and application for fees with this Court.
8. In exchange for the "no look fee" to be paid to debtor(s)' counsel, counsel shall:
 - a. Assist the debtor(s) as necessary with the loan modification process,
 - b. Review the proposed modification to the First Mortgage Loan with the debtor(s) and advise the debtor(s) on whether the modification of the First Mortgage Loan is in the debtor(s)' best interest,
 - c. File amended Schedules I and J with the Court which reflect the debtor(s)' current income at the time of the modification, the new modified First Mortgage Loan payment amount, and a review and update of all other monthly expenses, and
 - d. Identify what actions, if any, are advisable with respect to junior mortgages or liens, although counsel would be entitled to additional fees for implementing that action plan.
9. The Chapter 13 Trustee in Akron is not permitted to process any part of this "no look fee" for debtor(s)' counsel until amended Schedules I and J are filed with the

Court.

10. The Chapter 13 Trustee in Akron has stated that he will not seek a modification of a Chapter 13 plan based on a reduced monthly payment as a result of the First Mortgage Loan modification.
11. The Court recognizes that a First Mortgage Loan modification is a voluntary act between the debtor(s) and lender and encourages the parties to work on resolutions mutually beneficial to all parties. Debtor(s) should consult with counsel before signing any loan modification documents and are expected to cooperate with counsel in the preparation of an amended Schedule I (income) and an amended Schedule J (expenses).

IT IS SO ORDERED.

Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:

Debtor

CASE NO. _____

CHAPTER ____

BANKRUPTCY JUDGE

(**property address**)

(**last four digits of loan # xxxx**)

(**related claim number**)

**NOTICE OF POST-PETITION CHANGE IN MONTHLY MORTGAGE PAYMENT
(HAMP Loan Modification Consideration)**

_____ (“Creditor”), its successors and assigns, by and through its
servicer, _____, does hereby give notice of the following payment
change:

Effective _____, the new post-petition payment amount is **_(BOLD)_**.

The breakdown is as follows:

\$ _____ P&I
\$ _____ Future Taxes
\$ _____ Future Insurance

The change is the result of the Debtor requesting consideration of a modification of the loan pursuant to the Home Affordable Modification Program (HAMP). In accordance with the provisions of HAMP, the Debtor shall make payments at the reduced amount for the three month trial period (___ 2010 to ___ 2010). Should Debtor successfully complete the trial period then a permanent loan modification agreement may be submitted for approval of the Court and/or Trustee. Should Debtor fail to timely make the reduced payments or otherwise fail to qualify for a permanent modification, Creditor shall file a new Notice of Payment Change to show the payment amounts reverting to the terms of the original loan agreement.

Payments are due on the ___ of each month.

Payments should be sent to Creditor at the following address:

_____.

Respectfully submitted,

/s/ _____
Creditor Atty

CERTIFICATE OF SERVICE

A copy of the foregoing Notice was served by regular U.S. Mail this _____ day of _____, 2010, upon the following parties in interest at the addresses stated:

Debtor(s)

Other lien holders

/S/
Attorney for Creditor

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that the foregoing Notice was electronically transmitted on or about this _____ day of _____ 2010, via the Court's CM/ECF system to the following parties who are listed on the Court's Electronic Mail Notice List:

Debtor Attorney

Trustee

U.S. Trustee

/S/
Attorney for Creditor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In Re:

Debtor

CASE NO. _____

CHAPTER __

BANKRUPTCY JUDGE

(**property address**)

(**last four digits of loan # xxxx**)

(**related claim number**)

**NOTICE OF POST-PETITION CHANGE IN MONTHLY MORTGAGE PAYMENT
(HAMP Loan Modification Ineligibility)**

_____ (“Creditor”), its successors and assigns, by and through its servicer, _____, does hereby give notice of the following payment change:

Effective _____, the new post-petition payment amount is **_(BOLD)_**.

The breakdown is as follows:

\$ _____	P&I
\$ _____	Future Taxes
\$ _____	Future Insurance

The change is the result of the Debtor having requested consideration of a modification of the loan pursuant to the Home Affordable Modification Program (HAMP). In accordance with the provisions of HAMP the payment was reduced for a three month trial period, and the reduction was previously noticed. However, the Debtor failed to timely make the trial period payments or is otherwise ineligible for a HAMP modification. Therefore, effective ____ 2010 the monthly payment amounts shall be determined in accordance with the terms of the original loan agreement.

Payments are due on the __ of each month.

Debtor shall make payments to Creditor at the following address:

Respectfully submitted,

/s/

Attorney for Creditor

CERTIFICATE OF SERVICE

A copy of the foregoing Notice was served by regular U.S. Mail this _____ day of _____, 2010, upon the following parties in interest at the addresses stated:

Debtor(s)

Other lien holders

/S/

Attorney for Creditor

CERTIFICATE OF ELECTRONIC SERVICE

I hereby certify that the foregoing Notice was electronically transmitted on or about this _____ day of _____ 2010, via the Court's CM/ECF system to the following parties who are listed on the Court's Electronic Mail Notice List:

Debtor Attorney

Trustee

U.S. Trustee

/S/

Attorney for Creditor

**THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO**

In Re:) CHAPTER 13
) CASE NO:
)
DEBTOR(S))
) BANKRUPTCY JUDGE
)
) AGREED ORDER BETWEEN DEBTOR(S)
) AND MORTGAGE LENDER MODIFYING
) THE AUTOMATIC STAY ONLY FOR THE
) LIMITED PURPOSE OF COMPLETING A
) LOAN MODIFICATION
)
)
)
)
)
)

.....
1. The above Chapter 13 case was filed by _____ (the "Debtor(s)") on

2. The Debtor(s)' principal residence ("Home") is located at:

Street Address
City, State, Zip

3. Prior to filing a petition for relief under Chapter 13, the Debtor(s) obtained a loan from _____ (the "Mortgage Lender") which was evidenced by a Note in the amount of \$_____ (the "Note"). The obligation under the Note was secured only by a senior lien on the Debtor(s)' Home (the "Mortgage").

4. The Debtor(s) and a duly authorized agent of the Mortgage Lender have been negotiating the terms of a modification of the Note (the "Loan

CHAPTER 13
Keith Rucinski,
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308

(330) 762-6335
Fax
(330) 762-7072
Email
krucinski@chl3akron.com

- Modification”).
5. Although the Debtor(s) could not, absent consent from the Mortgage Lender, modify the terms of the Note through confirmation of a Chapter 13 plan, the Debtor(s) and the Mortgage Lender have voluntarily agreed to modify the Note secured by the Debtor(s)' Home.
 6. The Chapter 13 Trustee in Akron (the “Trustee”) takes no position either in favor or opposition to the Loan Modification. The Trustee’s signature on this order only indicates that the Trustee does not oppose the modification of the automatic stay only for the limited purpose of allowing the Debtor(s) and the Mortgage Lender to complete their voluntary Loan Modification.
 7. The terms of the Loan Modification offered by the Mortgage Lender and accepted by the Debtor(s) are summarized as follows:

	Current Mortgage	Modified Mortgage
Principal		
Interest rate		
Fixed		
Adjustable		
Term in months		
Last payment due		
Monthly Payment		
Principal		
Insurance		
Property Taxes		
Total monthly payment		

NOTE: A copy of the Mortgage Lender’s offer of this Loan Modification must be attached to this order and the Mortgage Lender’s correspondence shall be construed as the Mortgage Lender’s consent to this “agreed order” unless an objection is filed within 14 days of the entry of this agreed order on the Court’s docket.

8. The total fee, if any, charged to the Debtor(s) by the Mortgage Lender for the Loan Modification is _____.
9. The Debtor(s) must make the first payment on the Loan Modification by not later than _____. **Note: If property taxes and homeowners insurance are not included in the modified mortgage payment, these costs must be paid by the Debtor(s) in addition to the modified mortgage payment.**
10. The Debtor(s) shall submit payments under the Loan Modification to the Mortgage Lender at the following address:

ABC Mortgage
123 Main St., Suite 999
Akron, OH 44308
Acct #

11. As of the date of this order, the Debtor(s) is deemed current in monthly mortgage payments as a result of this Loan Modification.
12. The Trustee will cease paying the arrearage claim and will cease making

CHAPTER 13

Keith Rucinski,
Trustee
One Cascade Plaza
Suite 2020
Akron, Oh 44308
(330) 762-6335
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krucinski@ch13akron.com

- conduit payments.
13. Within 30 days from the date of this order, the Debtor(s) must file an amended Schedule I (income) and an amended Schedule J (expenses) which reflects the monthly payment due under the Loan Modification.
 14. Debtor(s) counsel is awarded a “no look fee” in the amount of \$_____ with regard to this order, working with the Debtor(s) on the Loan Modification, assessing the status of other liens on the Debtor(s)’ Home, and filing amended Schedules I and J.
 15. By signing this order, the Debtor(s) consent to the \$_____ “no look fee.” Said fee should be paid by the Trustee from the funds of this bankruptcy estate.

WHEREFORE, the Court hereby modifies the automatic stay pursuant to 11 U.S.C. § 362 only for the limited purpose of allowing the Debtor(s) and the Mortgage Lender to voluntarily finalize the Loan Modification pursuant to applicable state law. The Mortgage Lender is also authorized to send the Debtor(s) new payment booklets and other material with respect to the Loan Modification.

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Submitted and Approved by:

 Attorney for the Debtor(s)
 123 Main St. Suite 123
 Akron, Ohio 44308
 Phone:
 Fax:
 Email:

 Debtor

 Joint Debtor (if applicable)

Trustee Does Not Oppose the Limited Modification of the Stay

 Keith L. Rucinski, Chapter 13 Trustee
 Ohio Reg. No. 0063137
 Joseph A. Ferrise, Staff Attorney
 Ohio Reg. No. 0084477
 One Cascade Plaza, Suite 2020
 Akron, OH 44308
 Tel 330.762.6335
 Fax 330.762.7072
krucinski@ch13akron.com
jferrise@ch13akron.com

cc: Debtor & Joint Debtor
 123 Main St.
 Akron, OH 44308
 (via Regular Mail)

Mortgage Company (at address on Proof of Claim)
 123 Main St.
 Akron, OH 44308

CHAPTER 13

Keith Rucinski,
 Trustee
 One Cascade Plaza
 Suite 2020
 Akron, Oh 44308
 (330) 762-6335
 Fax
 (330) 762-7072
 Email
 <rucinski@ch13akron.com

(via Regular Mail)

Mortgage Company (at address on Loan Modification offer)
123 Main St.
Akron, OH 44308
(via Regular Mail)

Debtor's Counsel
(via ECF)

Keith L. Rucinski, Chapter 13 Trustee
(via ECF)