

HAMP MODIFICATION OF MORTGAGES IN CHAPTER 13 CASES

Utah Bankruptcy Lawyers' Forum
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WHAT IS HAMP

“Home Affordable Modification Program”

- Encourages lenders to modify mortgages to reduce monthly payments to no more than 31% of debtor's gross monthly income.
- Lenders receive compensation from Treasury for modifying mortgages.
- As of June 1, 2010, lenders must cease all foreclosure activity once borrower is in an approved HAMP trial period of three months (“Trial Period”)(may not apply to Freddie and Fannie loans).
- If HAMP modification is denied, lender must give borrower a “Non-Approval Notice,” and lender may not conduct foreclosure sale within 30 days of giving such notice (does not apply if borrow ineligible for HAMP).

ELIGIBILITY FOR HAMP

- Filing for bankruptcy before, during, or after HAMP process does not disqualify debtor (may not apply to Freddie and Fannie loans).
- Mortgage must have originated on or before January 1, 2009.
- Principal balance must not be greater than \$729,750.
- Monthly mortgage payment (including taxes, insurance, and HOA fees) must be greater than 31% of borrower's monthly gross income.
- Borrower must be facing a hardship (e.g., loss of income, increased expenses, imminent threat of default, etc.).
- Borrower must have sufficient, current income to make 31% mortgage payment.

OPTIONS TO REACH 31% PAYMENT RATIO (in order of priority)

- Re-capitalize of total delinquency (except for late fees) into principal balance of note.
- Reduce interest rate in increments of .125% to floor of no less than 2%. Reduced rate remains fixed for 5 years and then can increase 1% per year up to market interest rate at time of modification.
- Re-amortize loan up to 40 years (480 months).
- Forebear interest accrual on a portion of principal; however, principal remains due.
- Debtor can propose HAMP modification of second mortgage if necessary to hit 31% goal (does not apply to 3rd or 4th mortgage liens).

PRINCIPAL FORGIVENESS (new as of June 1, 2010)

- Mortgage balance must exceed present home value by more than 115%.
- Amount above 115% can be forgiven to achieve 31% payment goal.
- Government provides financial incentives, but lender retains discretion to grant principal forgiveness.
- Principal forgiven in 1/3 increments for each year debtor remains current on mortgage payments.
- Experts think it unlikely that lenders will exercise this option.

HAMP PROCESS

- Lender can solicit borrowers that qualify for HAMP modification.
- If debtor is in bankruptcy, lender may, but is not required, to solicit HAMP modification. However, lender must respond if it receives a HAMP request from a debtor.
- Debtor must submit *Request for Modification & Affidavit* form supported by current bankruptcy papers (see attached).
- If HAMP request is approved, debtor must complete the three-month “Trial Period” by timely making all required payments and providing all required documents.
- After successfully completing the Trial Period, the modification becomes permanent subject to later increases in interest rate.

SUPPLEMENTAL DIRECTIVE 10-2 (effective June 1, 2010)

- Directive does not apply to Freddie and Fannie loans, but these entities still have discretion to work with debtor in bankruptcy.
- Chapter 7 and 13 debtors are eligible for HAMP mods.
- Lender must work with debtor to obtain bankruptcy court or trustee approval.
- Trial Period can be extended if needed to obtain bankruptcy court approval.

CHAPTER 7 DEBTOR

- Debtors with Chapter 7 discharge are eligible for HAMP – even if they did not reaffirm mortgage debt.
- HAMP loan document must reference that debtor previously received Chapter 7 discharge by including this language:
 - “I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”

NET PRESENT VALUE ANALYSIS

- Lender determines whether loan has more value under HAMP modification or by pursuing foreclosure.
- No standardized formula and no disclosure as to how lender makes this determination.

HAMP IN CHAPTER 13

- To determine eligibility for HAMP modification, lender can use bankruptcy schedules and tax returns in lieu of *Request for Modification and Affidavit* ("RMA") & Form 4506-EZ (still requires Affidavit of Hardship).
- Bankruptcy papers older than 90 days must be updated.
- If Chapter 13 debtor is timely performing under HAMP Trial Period, mortgage creditor may not take the following actions on the grounds that the debtor has made the lower HAMP mortgage payment rather than the original payment under the note:
 - object to confirmation;
 - move for relief from stay; or
 - move to dismiss
- Under certain conditions, lender may waive Trial Period for Chapter 13 debtor if:
 - Debtor is current on post-petition mortgage payments;
 - Bankruptcy court approves HAMP modification;
 - Investor guidelines allow waiver.
 - Experts think waiver is unlikely.
- Reamortize pre and post-petition arrearage into new note amount.
- Reduce post-petition mortgage payment to 31% of debtor's gross income.
 - Query: What impact does reduction in mortgage payment have on disposable income analysis?
- Counsel must consider and deal with HAMP's impact on budget, plan, and claims.

PRE-FILING HAMP CONSIDERATIONS

- Request HAMP modification as soon as possible.
- Best if Trial Period starts pre-petition so HAMP terms can be incorporated into proposed plan, noticed to all parties, and approved by bankruptcy court.
- Counsel may need to stipulate to order allowing lender to communicate with debtor.
- Include plan language describing HAMP modification and its impact on claim(s).
- Prepare budget based on reduced HAMP mortgage payment.
- If debtor fails during the "Trial Period," counsel must file motion to modify the plan to address the mortgage arrearage and/or post-petition default or relief from stay is likely.

POST-CONFIRMATION HAMP MODIFICATIONS

- File motion to modify plan and to enter into HAMP agreement.
- Motion should include relevant details of modification (e.g., new payment amount, new interest rate, new due date, etc.).

ROLE OF DEBTOR’S COUNSEL

- Debtors’ counsel can materially assist clients in the HAMP process because they will already have most of the information to submit a HAMP modification request.
- Trustee will not object to additional attorney fees for reasonable services rendered in connection with a HAMP modification.

HAMP PAYMENT REDUCTION ESTIMATOR

| | | |
|---|--|----|
| 1 | Total Monthly Mortgage Payment: Include principal, interest, taxes, insurance and homeowners’ association dues if applicable. | \$ |
| 2 | Current Gross Monthly Income: Include income of all borrowers who are liable on the mortgage. | \$ |
| 3 | Current Debt-To-Income Ratio (divide line 1 by line 2) (must be greater than 31% to qualify for HAMP). | % |
| 4 | Target Mortgage Payment Under HAMP (multiply line 2 by .31) | \$ |
| 5 | Reduction in Monthly Payment (subtract line 4 from line 1) | \$ |

PROPOSED HAMP AUTHORIZATION LETTER

Dear Lender:

This office represents Jane Debtor (the "Debtor") in a pending Chapter 13 case filed on _____, in the United States Bankruptcy Court for the District of Utah, Bankruptcy No. _____. The confirmation hearing in this case is scheduled for _____ (or the bankruptcy court confirmed the Debtor's plan on _____).

Pursuant to the Debtor's authorization given below, we hereby request a loan modification under the procedures of the Home Affordable Modification Program ("HAMP") to resolve any delinquency and to reduce the monthly mortgage payment to no more than 31% of the Debtor's gross monthly income (see <http://makinghomeaffordable.gov>).

In this case, the Debtor's gross monthly income is currently \$ _____; therefore, we are seeking to reduce the monthly mortgage payment to no more than \$ _____ (31% of gross monthly income) consistent with the applicable HAMP standards.

The Debtor is also delinquent on pre-petition mortgage payments in the estimated amount of \$ _____. Under HAMP, the Debtor will seek to recapitalize this arrearage amount into the note.

The provisions of the HAMP modification will be included in a confirmed or modified plan.

Please send your HAMP modification package directly to our address so that we may assist the Debtor in the timely completion of the HAMP documents.

Sincerely,
Debtor's Counsel

**DEBTOR'S AUTHORIZATION TO LENDER TO PROVIDE DOCUMENTATION TO
LEGAL COUNSEL REGARDING HAMP MODIFICATION IN CHAPTER 13
BANKRUPTCY CASE**

We hereby authorize Lender and its employees and agents to provide documentation to our above-named legal counsel in connection with our request for a HAMP modification of our loan secured by our residence at the following address: _____.

Dated: _____

Debtor's Signature: _____

Proposed Chapter 13 Plan Language For HAMP Loan Modification

Secured Mortgage Claim of *Lender*:

The claim of *Lender* secured by a deed of trust on the Debtor's residence shall be paid through a loan modification under the Making Home Affordable Program ("HAMP").

The Debtor has or will send an application for such modification to *Lender's* HAMP department seeking to recapitalize any pre-petition mortgage arrearage into the principal balance of the note and to reduce the monthly mortgage payments to no more than 31% of the Debtor's applicable gross monthly income.

Subject to subsequent orders of the bankruptcy court, the Trustee shall not disburse any funds on *Lender's* arrearage claim. Until the HAMP modification is approved, the Debtor will continue to directly make post-petition mortgage payments to *Lender* under the original terms of the note. After approval of the HAMP modification, the Debtor will make payments to *Lender* consistent with the terms of the HAMP trial-period modification and/or HAMP permanent modification.

If the trial and/or permanent HAMP modification occurs before confirmation of the plan, the Debtor will provide the Trustee with a copy of the HAMP modification agreement and will seek bankruptcy court approval of such modification in connection with the confirmation of this plan. Otherwise, the Debtor will seek bankruptcy court approval of any HAMP modification pursuant to a motion to modify the plan under § 1329 that includes the terms of the proposed modification.

If the HAMP modification fails to resolve the allowed claim of *Lender*, *Lender* may file a motion for relief from stay and the Debtor may seek to modify the plan or to provide for or otherwise resolve the claim of *Lender*.

If the terms of the HAMP modification as finally approved are materially different than represented herein, the Debtor will seek court approval of such terms.

Making Home Affordable Program Request For Modification and Affidavit (RMA)



REQUEST FOR MODIFICATION AND AFFIDAVIT (RMA) page 1 **COMPLETE ALL THREE PAGES OF THIS FORM**

▶ Loan I.D. Number _____ ▶ Servicer _____

| BORROWER | | CO-BORROWER | |
|------------------------------------|---------------|------------------------------------|---------------|
| Borrower's name | | Co-borrower's name | |
| Social Security number | Date of birth | Social Security number | Date of birth |
| Home phone number with area code | | Home phone number with area code | |
| Cell or work number with area code | | Cell or work number with area code | |

I want to: Keep the Property Sell the Property

The property is my: Primary Residence Second Home Investment

The property is: Owner Occupied Renter Occupied Vacant

Mailing address _____

Property address (if same as mailing address, just write same) _____ E-mail address _____

Is the property listed for sale? Yes No

Have you received an offer on the property? Yes No

Date of offer _____ Amount of offer \$ _____

Agent's Name: _____

Agent's Phone Number: _____

For Sale by Owner? Yes No

Have you contacted a credit-counseling agency for help? Yes No

If yes, please complete the following:

Counselor's Name: _____

Agency Name: _____

Counselor's Phone Number: _____

Counselor's E-mail: _____

Who pays the real estate tax bill on your property?

I do Lender does Paid by condo or HOA

Are the taxes current? Yes No

Condominium or HOA Fees Yes No \$ _____

Paid to: _____

Who pays the hazard insurance premium for your property?

I do Lender does Paid by Condo or HOA

Is the policy current? Yes No

Name of Insurance Co.: _____

Insurance Co. Tel #: _____

Have you filed for bankruptcy? Yes No If yes: Chapter 7 Chapter 13 **Filing Date:** _____

Has your bankruptcy been discharged? Yes No **Bankruptcy case number** _____

Additional Liens/Mortgages or Judgments on this property:

| Lien Holder's Name/Servicer | Balance | Contact Number | Loan Number |
|-----------------------------|---------|----------------|-------------|
| | | | |
| | | | |

HARDSHIP AFFIDAVIT

I (We) am/are requesting review under the Making Home Affordable program.
I am having difficulty making my monthly payment because of financial difficulties created by (check all that apply):

| | |
|---|--|
| <input type="checkbox"/> My household income has been reduced. For example: unemployment, underemployment, reduced pay or hours, decline in business earnings, death, disability or divorce of a borrower or co-borrower. | <input type="checkbox"/> My monthly debt payments are excessive and I am overextended with my creditors. Debt includes credit cards, home equity or other debt. |
| <input type="checkbox"/> My expenses have increased. For example: monthly mortgage payment reset, high medical or health care costs, uninsured losses, increased utilities or property taxes. | <input type="checkbox"/> My cash reserves, including all liquid assets, are insufficient to maintain my current mortgage payment and cover basic living expenses at the same time. |
| <input type="checkbox"/> Other: | |

Explanation (continue on back of page 3 if necessary): _____

INCOME/EXPENSES FOR HOUSEHOLD¹

Number of People in Household: _____

| Monthly Household Income | | Monthly Household Expenses/Debt | | Household Assets | |
|---|-----------|--|-----------|--|-----------|
| Monthly Gross Wages | \$ | First Mortgage Payment | \$ | Checking Account(s) | \$ |
| Overtime | \$ | Second Mortgage Payment | \$ | Checking Account(s) | \$ |
| Child Support / Alimony / Separation ² | \$ | Insurance | \$ | Savings/ Money Market | \$ |
| Social Security/SSDI | \$ | Property Taxes | \$ | CDs | \$ |
| Other monthly income from pensions, annuities or retirement plans | \$ | Credit Cards / Installment Loan(s) (total minimum payment per month) | \$ | Stocks / Bonds | \$ |
| Tips, commissions, bonus and self-employed income | \$ | Alimony, child support payments | \$ | Other Cash on Hand | \$ |
| Rents Received | \$ | Net Rental Expenses | \$ | Other Real Estate (estimated value) | \$ |
| Unemployment Income | \$ | HOA/Condo Fees/Property Maintenance | \$ | Other _____ | \$ |
| Food Stamps/Welfare | \$ | Car Payments | \$ | Other _____ | \$ |
| Other (investment income, royalties, interest, dividends etc.) | \$ | Other _____ | \$ | Do not include the value of life insurance or retirement plans when calculating assets (401k, pension funds, annuities, IRAs, Keogh plans, etc.) | |
| Total (Gross Income) | \$ | Total Debt/Expenses | \$ | Total Assets | \$ |

INCOME MUST BE DOCUMENTED

¹Include combined income and expenses from the borrower and co-borrower (if any). If you include income and expenses from a household member who is not a borrower, please specify using the back of this form if necessary.

²You are not required to disclose Child Support, Alimony or Separation Maintenance income, unless you choose to have it considered by your servicer.

INFORMATION FOR GOVERNMENT MONITORING PURPOSES

The following information is requested by the federal government in order to monitor compliance with federal statutes that prohibit discrimination in housing. **You are not required to furnish this information, but are encouraged to do so. The law provides that a lender or servicer may not discriminate either on the basis of this information, or on whether you choose to furnish it.** If you furnish the information, please provide both ethnicity and race. For race, you may check more than one designation. If you do not furnish ethnicity, race, or sex, the lender or servicer is required to note the information on the basis of visual observation or surname if you have made this request for a loan modification in person. **If you do not wish to furnish the information, please check the box below.**

| | | | |
|-------------------|---|--------------------|---|
| BORROWER | <input type="checkbox"/> I do not wish to furnish this information | CO-BORROWER | <input type="checkbox"/> I do not wish to furnish this information |
| Ethnicity: | <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino | Ethnicity: | <input type="checkbox"/> Hispanic or Latino <input type="checkbox"/> Not Hispanic or Latino |
| Race: | <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White | Race: | <input type="checkbox"/> American Indian or Alaska Native <input type="checkbox"/> Asian <input type="checkbox"/> Black or African American <input type="checkbox"/> Native Hawaiian or Other Pacific Islander <input type="checkbox"/> White |
| Sex: | <input type="checkbox"/> Female <input type="checkbox"/> Male | Sex: | <input type="checkbox"/> Female <input type="checkbox"/> Male |

To be completed by interviewer

| | | |
|---|--|--|
| This request was taken by: <input type="checkbox"/> Face-to-face interview <input type="checkbox"/> Mail <input type="checkbox"/> Telephone <input type="checkbox"/> Internet | Interviewer's Name (print or type) & ID Number | Name/Address of Interviewer's Employer |
| | Interviewer's Signature Date | |
| | Interviewer's Phone Number (include area code) | |

ACKNOWLEDGEMENT AND AGREEMENT

In making this request for consideration under the Making Home Affordable Program, I certify under penalty of perjury:

1. That all of the information in this document is truthful and the event(s) identified on page 1 is/are the reason that I need to request a modification of the terms of my mortgage loan, short sale or deed-in-lieu of foreclosure.
2. I understand that the Servicer, the U.S. Department of the Treasury, or their agents may investigate the accuracy of my statements and may require me to provide supporting documentation. I also understand that knowingly submitting false information may violate Federal law.
3. I understand the Servicer will pull a current credit report on all borrowers obligated on the Note.
4. I understand that if I have intentionally defaulted on my existing mortgage, engaged in fraud or misrepresented any fact(s) in connection with this document, the Servicer may cancel any Agreement under Making Home Affordable and may pursue foreclosure on my home.
5. That: my property is owner-occupied; I intend to reside in this property for the next twelve months; I have not received a condemnation notice; and there has been no change in the ownership of the Property since I signed the documents for the mortgage that I want to modify.
6. I am willing to provide all requested documents and to respond to all Servicer questions in a timely manner.
7. I understand that the Servicer will use the information in this document to evaluate my eligibility for a loan modification or short sale or deed-in-lieu of foreclosure, but the Servicer is not obligated to offer me assistance based solely on the statements in this document.
8. I am willing to commit to credit counseling if it is determined that my financial hardship is related to excessive debt.
9. I understand that the Servicer will collect and record personal information, including, but not limited to, my name, address, telephone number, social security number, credit score, income, payment history, government monitoring information, and information about account balances and activity. I understand and consent to the disclosure of my personal information and the terms of any Making Home Affordable Agreement by Servicer to (a) the U.S. Department of the Treasury, (b) Fannie Mae and Freddie Mac in connection with their responsibilities under the Homeowner Affordability and Stability Plan; (c) any investor, insurer, guarantor or servicer that owns, insures, guarantees or services my first lien or subordinate lien (if applicable) mortgage loan(s); (d) companies that perform support services in conjunction with Making Home Affordable; and (e) any HUD-certified housing counselor.

▶ _____ Date

Borrower Signature

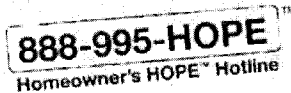
▶ _____ Date

Co-Borrower Signature

HOMEOWNER'S HOTLINE

If you have questions about this document or the modification process, please call your servicer.

If you have questions about the program that your servicer cannot answer or need further counseling, you can call the Homeowner's HOPE™ Hotline at 1-888-995-HOPE (4673). The Hotline can help with questions about the program and offers free HUD-certified counseling services in English and Spanish.



NOTICE TO BORROWERS

Be advised that by signing this document you understand that any documents and information you submit to your servicer in connection with the Making Home Affordable Program are under penalty of perjury. Any misstatement of material fact made in the completion of these documents including but not limited to misstatement regarding your occupancy in your home, hardship circumstances, and/or income, expenses, or assets will subject you to potential criminal investigation and prosecution for the following crimes: perjury, false statements, mail fraud, and wire fraud. The information contained in these documents is subject to examination and verification. Any potential misrepresentation will be referred to the appropriate law enforcement authority for investigation and prosecution. By signing this document you certify, represent and agree that: "Under penalty of perjury, all documents and information I have provided to Lender in connection with the Making Home Affordable Program, including the documents and information regarding my eligibility for the program, are true and correct."

If you are aware of fraud, waste, abuse, mismanagement or misrepresentations affiliated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline by calling 1-877-SIG-2009 (toll-free), 202-622-4559 (fax), or www.sig tarp.gov. Mail can be sent to Hotline Office of the Special Inspector General for Troubled Asset Relief Program, 1801 L St. NW, Washington, DC 20220.

