

**U.S. Bankruptcy Court for the Middle District of Pennsylvania
Attorney Liaison Committee
July 30, 2012
Minutes**

Attendance:

Bar: **Bob Chernicoff, Anne Fiorenza, Steve Gurdin, Dave Harris, Jim Jones, Ann Swartz, Tracy Updike, Adam Weaver and Elliott Weiss**

Clerk's Office: **Terry Miller, Sheila Booth, Pattie Hartman, Cindy Boyle and Belinda Wagner**

Chambers: **Judge Mary France and Judge Robert Opel**

The meeting was convened at 3:00 pm; Judge France welcomed the members of the Committee and Clerk's Office. Pattie Hartman recorded minutes in Sue Frisch's absence.

Attorney Weiss provided a report of the percentage of homes in selected PA counties where the values of the homes are less than the amount of the mortgages. The percentage of "underwater" homes in the selected counties ranged from 8% in Bradford County to 56% in Pike County.

I. Old Business

A. Mortgage Modification Task Force – Attorney Schalk was unable to attend, so Attorney Updike reported on the progress of the task force project:

- Previously, the draft policy, pleadings, and orders related to Mortgage Modification Mediation Program were sent to the Judges for their consideration.
- The Mortgage Modification Mediation Program was presented for discussion at the MDBBA Conference in June. The session was well attended and there was much interest, but most participants could only speculate as to how much they would use it, varying from 1 or 2 times per month to 1 or 2 times per year.

Before taking further steps to implement the Program under the general outline developed by the Task Force, Judge France requested Attorney Updike to distribute an electronic survey to the MDBBA asking for information about anticipated use of the Program and to present the results at the next meeting. Attorney Updike stated she would talk with Attorney Schalk (who was unable to attend the meeting) about the development and distribution of the survey and would be prepared to report back at the next quarterly meeting.

Judge Opel said the three judges are generally supportive of the concept, but wanted to understand how much court involvement was anticipated by the bar. He asked whether the current members of the mediation panel would be willing to provide the necessary services to implement the program and

whether they had been contacted about this issue. Attorney Updike responded that the mediators were contacted, with a 78% response rate, and all but one would be interested in serving as a mediator.

Judge Opel asked about the ability or willingness of the debtors to pay the \$125 fee anticipated in the proposal. Attorney Updike said attorneys she has contacted do not think that will be a problem and that creditors will be required to pay a comparable fee. Attorney Swartz said that the purpose of requiring the debtors to pay a fee is to ensure that the program is offered to serious debtors that are acting in good faith to save their homes. To consider a debtor for the program, counsel will have the responsibility to determine if the debtor is a good candidate for the program.

Judge Opel raised the concern of the lack of statutory authority for these types of programs. Both judges agreed that local rules are needed to implement the program. Judge France and Judge Opel agreed that a rule stating mediators may not be called as a witness. Judge France suggested that a rule addressing the Mortgage Modification Program could incorporate many of the provisions of LBR 9019-2 (ADR), and the motion practice related to the Program could incorporate some of the procedures used when addressing motions for relief from the stay. The program will not be mandated by the court, but instead presented as a tool for both lenders and debtors.

The question, "Why only Chapter 13s, when other states include all chapters" was addressed. Judge France said it would be prudent to start the new program with only Chapter 13s before trying to address Chapter 7 cases.

Judge Opel asked whether the court would be expected to conduct a hearing if the lender objected to the motion. There was a consensus that if the lender objects, the debtor will be unable to seek modification through the program.

Judge France asked whether the task force anticipated that the court would be able to grant extensions to the lender's two-day response deadline. Overall, it was agreed that extensions would be allowed.

As designed, the program limits modification to mortgages with a balance of less than \$729,750 where the mortgage payment is not affordable due to financial hardship. It was explained that currently any mortgage amount above \$729,750 is a "Jumbo Mortgage" so these larger mortgages would not be eligible for the program. It was agreed that the term "financial hardship" need not be defined because most debtors are experiencing "financial hardship."

The local rule should address the process to be used to get the case to the mediator, including the process of choosing the mediator and of checking for conflicts. Another issue to be resolved is the effect of an order modifying the mortgage entered post-confirmation. Vesting provisions of the plan will need to be considered. It may be helpful to clarify what the parties expect will happen if payments are missed after the mortgage has been modified.

A discussion ensued on whether an order needed to be entered in a case approving the modification or could this be done by stipulation. Several members of the Committee suggested that it was important to obtain an order so it can be filed in the county records, either in the office of the recorder of deeds or of the prothonotary.

Judge France said she and the other judges appreciate the work the task force has put into this project and if they think there is enough interest, the judges would be willing to go forward with the development of rules and procedures. The judges would like the task force to get a concrete measure of interest with a survey before further action is taken to draft rules and procedures. A survey will be conducted by the task force in the next 30 days, after which the task force will meet to draft a proposed set of rules, assuming there is sufficient interest.

As to the division of work between the Mortgage Mediation task force and the Local Rules committee, it was decided that since the task force developed the concept for the program, it was in a better position to draft the proposed rules, which then could be sent to the Rules Committee to integrate them into the structure of the local rules.

B. Mortgage Provisions in Model Plan -- There was a general discussion on objections that now are being raised by some creditors to certain optional provisions in the Model Chapter 13 Plan, particularly paragraph H(2). Paragraph H(2) provides that a pre-petition arrearage is deemed as contractually current upon confirmation of the plan, thus precluding the imposition of late payment charges or other default-related fees and services based solely on the pre-petition default. Judge Opel noted that there was creditor input on these provisions and suggested that this issue be referred to the Model Plan committee. It was suggested that this issue be continued to the agenda for the next meeting.

II. New Business (Moved to next meeting because Mr. Schalk, who raised the issue, was not in attendance).

LBF 4001-1 was amended last year to remove the signature line for the attorney for the mortgage company, thus requiring a signature by a representative of the lender. Relief from stay motions are still being filed with LBF 4001-1 forms signed by counsel. Mr. Schalk raised the issue as to whether the rule (LBR 4001-1) should be modified to state that a bank signature is required? Similarly, the issue was raised as to what impact the multi-state AG Settlement may have on our current procedures under LBR 4001-1. Under the settlement, lenders have agreed to submit certifications of account status on Chapter 13 relief from stay motions. If all lenders adopt this practice, would that moot the need to have the local rule?

The meeting was adjourned at 4:14 pm; the next meeting is scheduled for September 27, 2012 at 3:00 pm.