

MEMORANDUM

To: Chapter 13 Bar

From: Devin Derham-Burk
Chapter 13 Trustee

Date: January 16, 2011

Subject: Loan Modification Guidelines

I have recently created procedures for implementing the San Jose Division's Loan Modification Guidelines. If your client is proposing to modify a first mortgage secured by the debtor's residence, please make sure that you file and serve me with the declaration described in paragraph 7 of the guidelines. If we do not receive it by the date of the first 341 meeting of creditors, we will file an objection to confirmation.

If you put language in the plan stating that plan terms will revert to the terms in the operative loan documents if the loan modification request is denied, please make sure to include language describing whether the loan arrears will be paid through the plan or paid directly by the debtor if the loan modification is denied.

If you put language in the plan providing for loan modification *or surrender* of the property if the loan modification is denied, I will object for any expense amounts on Lines 47 or 48 of Form 22C.

If the plan proposes a loan modification and the ongoing payments are lower than the contract payments, I will object if you use the higher contract payments as expense amounts on Lines 47 or 48 of Form 22C unless your clients can prove that they actually paid the higher amounts during the six months prior to filing.

Approximately ninety (90) days prior to case completion my closing department will send a letter to you and your client if our records show that a loan modification was pending at the time the case was filed and we have not been advised that it is no longer pending. To avoid a possible closing of the case with no discharge, please make sure that you or your client advises us promptly once a loan modification is no longer pending.