

*Consumer Session*

# **Residential Mortgage Modification Mediation**

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# RESIDENTIAL MORTGAGE MODIFICATION MEDIATION

38<sup>th</sup> Annual Alexander L. Paskay Memorial  
Bankruptcy Seminar

Sponsored by the American Bankruptcy Institute  
and Stetson University College of Law

3/5/2015

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Chapter 13 Trustee  
Winter Park, Florida

## WHY MORTGAGE MODIFICATION WORKS IN BANKRUPTCY CASES

- Bankruptcy v. Foreclosure
- Judicial Involvement



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## PLAN PREPARATION AND TIMING



- Nuances of Bankruptcy
  - Modification Payments Through the Plan
- vs.
- Direct Payments Outside

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## TO MEDIATE OR NOT, THAT IS THE QUESTION

- Is the Debtor a Good Candidate?
- Will Mortgage Modification be Feasible?
- Who is the Lender and Why Does That Matter?



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## EFFECTIVE USE OF THE PORTAL



- How the Portal Works (Or is Supposed To)
- How to Make the Portal Your Friend

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## CREDITOR ISSUES AND CONSIDERATIONS

- Mortgage Modification Mediations with Non-Bank Mortgage Servicers



- What is Good Faith? Or, What is **Not** Good Faith?
  - In Re Enck, Case No. 6:12-bk-16486-CCJ, Middle District of Florida 2014 (J. Jackson)

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## CHAPTER 7 MORTGAGE MODIFICATION MEDIATIONS

- A Good Idea?
- Inherent Problems



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## WHAT DO YOU DO WITH A MORTGAGE MODIFICATION MEDIATION THAT IS NOT GOING ANYWHERE?



- Mediator Tips
- Creditor Suggestions

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## POST-MEDIATION ISSUES

- Trial payment plan issues – Timeliness!
  - Timely payments to the Trustee are deemed timely payments to the Creditor,” but what does a Creditor do when the Trustee isn’t paying?
- Title Issues—Junior Mortgages, Judgments, Government Liens
- Plan Modification, or NOT!



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## TIPS FOR A SUCCESSFUL MEDIATION



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UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
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In re	)	
	)	
ADMINISTRATIVE ORDER	)	Administrative Order
PRESCRIBING PROCEDURES FOR	)	FLMB-2014-9
MORTGAGE MODIFICATION	)	
MEDIATION,	)	
	)	
	)	

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**ADMINISTRATIVE ORDER  
PRESCRIBING PROCEDURES  
FOR MORTGAGE MODIFICATION MEDIATION**

The Bankruptcy Court for the Middle District of Florida has unified its mortgage modification mediation (“MMM”) procedures throughout the district. Effective August 15, 2014, all parties participating in mortgage modification mediation process in the Middle District of Florida shall comply with these procedures. Accordingly, it is

**ORDERED:**

1. MMM is available in all cases and for any type of real property.
2. A motion seeking MMM shall include, **on the first page of the motion**, a complete property address of the relevant property and the last four digits of the mortgage loan number. If not included, the motion will be abated until an amended motion containing the required information is filed.
3. No negative notice is required for a motion seeking MMM but lenders may seek reconsideration for cause within 14 days of entry of an order directing MMM.



4. A motion seeking MMM shall be filed within 90 days of the filing or conversion of the case. The Court will prepare and enter an order directing MMM on timely filed motions. If not timely filed, the Court will set a hearing and will grant the request only if good cause is demonstrated for the delay.

5. The parties will conclude the MMM process within 150 days of the filing or conversion of the case, unless that time is enlarged by written consent on the portal, by stipulation of the parties, or by Court order.

6. Parties shall have 14 days after the entry of the order directing MMM to jointly select a mediator qualified pursuant to Administrative Order FLMB-2013-3 or to object to the mediator selection process. If the parties cannot agree on a mediator, the Debtor will select a mediator, and the lender may file an objection within 7 days. If a timely objection to a mediator is filed, the Chapter 12 or 13 Trustee or the Clerk in a Chapter 7 or 11 case will select the mediator.

7. Both Debtor and Lender each shall pay \$250 directly to the mediator within seven days of the designation of the mediator. Parties also shall equally pay the Mediator for any additional hourly fees incurred from MMM conferences that extend beyond two, one-hour sessions.

8. Parties must use the secure portal (the “Portal”) (e.g. <https://www.dclmwp.com/Home>) for submission of documents to initiate the MMM and follow guidelines included in the Court’s order directing MMM entered in each individual case.

9. The parties may communicate outside the Portal orally, but all written communication shall occur through the Portal.

10. Parties may submit a proposed order simultaneously with a motion seeking approval of a *temporary* MMM agreement without need of negative notice or hearing.

11. Parties may use negative notice when filing a motion seeking approval of a *permanent* MMM agreement.

12. An order approving a permanent MMM agreement (i) shall be in a format that can be recorded in the public records of the county where the relevant property is located, and (ii) should be recorded by the Debtor within 90 days of the entry of the order, unless the parties agree otherwise.

13. Debtors seeking MMM must provide adequate protection to the lenders. For homestead properties, the Debtor must pay the lesser of (1) 31% of their gross disposable income (after deducting homeowner association fees), or (2) the normal monthly contractual mortgage payment. For non-homestead income producing property, the Debtor shall pay 75% of the gross rental income generated by the property. In Chapter 12 and 13 cases, the Debtor shall make the adequate protection payments to the Chapter 12 or 13 Trustee who shall hold the funds pending either further order of the Court or a joint stipulation of the parties. In all other chapters, the Debtor shall make the trial payments directly to the lender as agreed between the parties and without requiring Court approval or any modification of the automatic stay.

14. In Chapter 12 and 13 cases, the Court may confirm a plan of reorganization subject to pending MMM.

15. The MMM procedures do not affect amounts of allowed attorney fees for debtor and creditor attorneys participating in the MMM program. Divisional practices and limitations on such fees still control.

DATED: December 16, 2014

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KAREN S. JENNEMANN  
Chief United States Bankruptcy Judge

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Chief United States Bankruptcy Judge

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United States Bankruptcy Judge

Hon. Paul M. Glenn  
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United States Bankruptcy Judge

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Middle District of Florida

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Middle District of Florida

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UNITED STATES BANKRUPTCY COURT  
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In re \_\_\_\_\_ )  
 )  
, ) Case No. 6:bk--\_\_\_\_  
 ) Chapter \_\_\_\_  
Debtor(s). )  
\_\_\_\_\_) )

**MOTION FOR REFERRAL TO MORTGAGE MODIFICATION MEDIATION**

The Debtor(s) requests entry of an order referring the Debtor(s) and *[list creditors with mortgages encumbering the Debtor(s) residential property]*, whose mortgage lien encumbers the Debtor(s) real property located at: \_\_\_\_\_ with a Mortgage Loan Number ending in XXXX, to mortgage modification mediation, and in support states:

1. The Debtor(s) filed this bankruptcy case in an attempt to retain their primary residence.
2. The Debtor(s) would like to modify the terms of the mortgage(s) encumbering their primary residence. The Debtor(s) income will allow them to contribute as much as 31 percent of their current gross income to payment of their modified mortgage debt
3. Mediation will assist the parties in negotiation of a modification of the relevant mortgage(s).

WHEREFORE, the Debtor(s) requests the entry of an order referring this case to mediation and for such other and further relief the Court deems just and proper.

Dated: \_\_\_\_\_

\_\_\_\_\_  
[Attorney Name]  
[Name & Address of Firm]

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been provided by U.S. Mail, electronic mail, or facsimile transmission this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to:

Debtor  
Debtor's Attorney:  
Trustee:  
Creditor's Attorney  
Creditor:

By: \_\_\_\_\_  
[Attorney Name]

[Name and Address of Firm]

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In re:

Case No.  
Chapter

Debtor\*

\_\_\_\_\_/

**ORDER DIRECTING  
MORTGAGE MODIFICATION MEDIATION**

THIS CASE came on for consideration of Debtor's Motion for Mortgage Modification Mediation [Doc. No. \_\_\_\_] (the "Motion") regarding creditor [creditor name], property address [property address] and loan number ending in [####].

Accordingly, it is

**ORDERED:**

1. The Motion is granted.
2. Selection of Mediator. Parties shall have 14 days after entry of this Order to jointly select a Mediator qualified pursuant to Administrative Order FLMB-2013-3. If the parties cannot timely agree on a Mediator, the Debtor will select the Mediator, and the Lender may file an objection within seven days. If a timely objection to a Mediator is filed, the Chapter 12 or 13 Trustee or the Clerk in a Chapter 7 or 11 case will appoint the Mediator from the Court's list of approved Mediators. If the Debtor is not represented, the Court may select a Mediator.
3. Objections to Mortgage Modification Mediation ("MMM"). Lender may seek reconsideration of this Order by written motion filed within 14 days after entry of this Order. If a timely motion for reconsideration is filed, the Court will set a hearing, and all deadlines in this Order are suspended pending resolution of the motion.
4. MMM Portal. Parties must use a secure Portal (e.g. <https://www.dclmwp.com/Home>) for the submission of all documents related to the MMM process. Parties may communicate outside the Portal orally and may file *duplicate* documents elsewhere, but *all* written communication relating to the MMM process shall occur through the Portal. Any litigated matters incidental to the mediation are considered separate matters, and parties are not required to use the Portal for these separate matters.



5. Registration on the Portal. All parties and their attorneys must register to obtain access to the Portal. Parties and their counsel shall register with the Portal within seven days of the entry of this order; however, registration is a one-time event and, once registered, the party can use the Portal on other MMM mediations without registering again.
6. Initial Lender's Package. Upon registration, Lender shall provide to the Portal vendor all forms, documentation, and other requirements required for the Lender to start the MMM process ("Lender's Initial Package") for posting on the Portal. Lender shall update its requirements, as needed. If the Lender fails to timely register or supply its Initial Lender's Package, the Debtor may file a motion with the Court seeking sanctions against the Lender.
7. Identification of Mediators. Debtor shall identify the Mediator on the Portal within seven days of the Mediator's selection.
8. Submission of Documents on Portal. No later than seven days after the Lender's registration on the Portal, the Debtor shall a) pay the Portal fee, b) upload a copy of this Order to the Portal, and c) submit all documents and financial information requested by the Lender to the Portal. Within 14 days thereafter, the Lender shall acknowledge receipt of the Debtor's information and advise the Debtor of any additional or missing information needed by the Lender to proceed with its review. Debtor must supply any missing or additional information to the Lender via the Portal within seven days from the time of the Lender's request.
9. Scheduling Mediation. Within 28 days of the entry of this Order, the Mediator shall work diligently with the parties to coordinate a mutually convenient date, time, and place of the mediation.
10. Conclusion of Mediation within 150 Days. Parties will conclude the MMM process within 150 days of the filing or conversion of the case, unless that time is enlarged by written consent on the Portal, by stipulation of the parties, or by Court order.
11. Settlement Authority. Lender's designated representative shall have the authority (within investor guidelines) to settle and will attend and continuously participate in all scheduled mediation sessions.
12. Telephonic Attendance. Parties may participate in mediation sessions by telephone with the Mediator's approval. Debtor shall provide a foreign language interpreter, if necessary, at the Debtor's expense. All parties not physically present must be ready, willing, and able to sign a binding settlement agreement by facsimile, email, or other electronic means at the time of mediation.
13. Lender Obligations. Lender shall timely underwrite the loan modification request. If the Lender transfers the loan, the Lender must provide a copy of this Order to the

Successor Lender, who is obligated to comply with all terms of this Order and is bound by all agreements, whether interim or final.

14. Mediator Obligations. The mediator shall:

- a) Be governed by the standards of professional conduct set forth in the Florida rules for certified and court-appointed mediators and shall have judicial immunity in the same manner and the same extent as a judge;
- b) Receive compensation in the amount of \$500.00 for preparation for the mediation, execution of required documents, facilitation of document and information exchange between the parties, and participation in no more than two one-hour conferences;
- c) Receive compensation at an agreed hourly rate for any MMM conferences that extend beyond two one-hour conferences;
- d) Login to the MMM portal within seven days after designation and use the Portal to facilitate the exchange of information of additional documentation between the Parties in an effort to perfect the documents needed for Lender to complete its review;
- e) Report on the Portal the scheduling of all mediation sessions and maintain a log of attendees at each session; and
- f) File with the Court a final report not later than seven days after conclusion of the final mediation session indicating whether an agreement was reached or not.

15. Mediator Fees. Both Debtor and Lender each shall pay \$250 directly to the Mediator within seven days of the designation of the Mediator. Parties also shall equally pay the Mediator for any additional hourly fees incurred from MMM conferences that extend beyond two, one-hour sessions.

16. Privileged Communications. All oral or written statements made by the parties, attorneys, and other participants at or associated with the mediation are privileged and confidential except that the log of attendees maintained by the Mediator is not confidential. All confidential statements shall not be reported, recorded, placed into evidence, made known to the Court, or construed for any purposes as an admission. No party shall be bound by any statement made or action taken at the mediation conference unless an agreement is reached.

17. Stay Lifted to Allow Loan Modification. The automatic stay is modified, to the extent necessary, to facilitate the MMM process. Participation in mediation conducted pursuant to this Order does not preclude participation in state court foreclosure mediation.

18. Adequate Protection Payments in Chapter 12 and 13 Cases. In Chapter 12 and 13 cases, Debtors seeking MMM must provide adequate protection to the Lenders. For homestead properties, the Debtor must pay the Chapter 12 or 13 Trustee the lesser of (1) 31% of their gross disposable income (after deducting homeowner association

fees), or (2) the normal monthly contractual mortgage payment. For non-homestead property, the Debtor shall pay to the Chapter 12 or 13 Trustee 75% of all rental income generated by the property. The Trustee shall hold the funds pending either further Order of the Court or a joint stipulation of the parties. In addition, with Chapter 12 and 13 cases, the Court may confirm a plan of reorganization subject to pending MMM.

19. Abatement of Payment Changes and Deferral of 3002.1 Notices. All changes to the regular contractual mortgage payments are abated and all notices required by Bankruptcy Rule 3002.1 (b) and (c) are deferred pending the conclusion of the MMM process, including during any trial payment period.
20. Good Faith Requirement. All parties are directed to comply with this Order and to engage in the MMM process in good faith. Failure to do so may result in the imposition of damages and sanctions.
21. Extension of Deadlines. Any of the deadlines imposed by this Order may be extended by order of the Court.
22. Parties Directed to Comply. If any parties or their counsel fail to comply with the terms of this Order, the Court will consider a motion to vacate this Order and also may impose sanctions.

DATED: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge

Movant's Attorney is directed to serve a copy of this order on interested parties and file a Proof of Service within 3 days of entry of the order

\*All references to "Debtor" shall include and refer to both the Debtors in a case filed jointly by two individuals.

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UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA

DIVISION

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In re

,

Debtor(s).

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Case No. 6:bk--

Chapter

**DEBTOR(S)**  
**MOTION TO AMEND**  
**MORTGAGE MODIFICATION MEDIATION ORDER**

The Debtor(s) requests entry of an Amended Mortgage Modification Mediation Order ("MMM") requiring the Debtor(s) and \_\_\_\_\_, whose mortgage lien encumbers the Debtor(s) real property located at: \_\_\_\_\_ with a Mortgage Loan Number ending in XXXX, to comply with updated MMM procedures and in support states:

1. A Mortgage Modification Mediation Order (Doc. No. \_\_) was entered prior to August 15, 2014, when the Court started to require parties to use a Portal and follow other updated procedures.

2. Entry of an Amended Mortgage Modification Mediation Order directing parties to follow these new procedures will facilitate the successful completion of the mediation process.

WHEREFORE, the Debtor(s) requests the entry of an Amended Mortgage Modification Mediation Order referring this case to mediation under the new procedures.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing has been provided by U.S. Mail, electronic mail, or facsimile transmission this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, to:

Debtor

Debtor's Attorney:

Trustee:

Creditor's Attorney

Creditor:

By:

\_\_\_\_\_  
Attorney for Debtor

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
\_\_\_\_\_ DIVISION

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In re

Debtor(s).  
\_\_\_\_\_

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Case No. 6:\_\_\_\_-bk-\_\_\_\_\_-\_\_\_\_\_  
Chapter

**ORDER GRANTING DEBTOR(S) MOTION TO  
AMEND MORTGAGE MODIFICATION MEDIATION ORDER**

This case came on for consideration on the Debtor(s) Motion to Amend Mortgage Modification Mediation Order (Doc. No. \_\_\_\_ ) (the "Motion"). After reviewing the pleadings and considering the position of the parties, it is

**ORDERED:**

1. The Motion (Doc. No. \_\_\_\_ ) is granted.
2. The Clerk is directed to enter an Amended Mortgage Modification Mediation

Order .

DONE AND ORDERED in Orlando, Florida, on October 22, 2014.

\_\_\_\_\_  
United States Bankruptcy Judge

Attorney for Debtor(s) is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

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In re:

Administrative Order 14-03

Adoption of Mortgage Modification  
Mediation Program and Status of  
Loss Mitigation Mediation Program  
Adopted Under AO 13-01

In accordance with 11 U.S.C. § 105(a), this court entered Administrative Order 13-01 "Adoption of Loss Mitigation Mediation Program" which implemented a mortgage modification program in this court effective April 1, 2013.

In February 2014, the United States Bankruptcy Court for the Middle District of Florida hosted a statewide Chapter 13 Mortgage Modification Mediation Summit (Summit) to provide an open forum for debtors' attorneys, mediators, lenders and chapter 13 trustees to discuss and compare the three mortgage modification mediation programs offered in the Southern, Middle and Northern Districts of Florida.

As a result of the Summit, the bankruptcy judges of the Southern, Middle and Northern Districts of Florida agreed to strive toward uniformity in all three districts and have identified and agreed upon certain provisions that should be included in each court's program, with a focus on what is working well and on possible efficiencies that could be implemented to improve the respective programs.

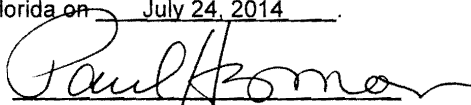
The court, in accordance with the findings of the Summit, and in continued determination that a mortgage modification program may avoid the need for litigation, reduce costs to participants, and enable debtors to reorganize or otherwise address their most significant debts and assets under the United States Bankruptcy Code,

**ORDERS** as follows:

1. The Loss Mitigation Mediation (LMM) Program and implementing procedures and local forms adopted under Administrative Order 13-1 shall be replaced by the Mortgage Modification Mediation (MMM) Program and implementing procedures and forms. The MMM Program shall become effective August 1, 2014, for the following cases:
  - (a) Individual debtor cases filed or reopened under an eligible chapter on or after August 1, 2014, as set forth in the MMM Program Procedures;

- (b) Individual debtor cases filed prior to August 1, 2014, in which no motion under LMM has ever been filed as of the effective date of the MMM Program, as set forth in the MMM Program Procedures, provided that those debtors seek to commence MMM on or after August 1, 2014, and not later than September 30, 2014; and,
- (c) Individual debtor cases where the court has authorized, after motion and hearing, an application to participate in MMM outside the time periods established in paragraphs (a) and (b) above.
2. The compensation and cost amounts allowed for participants in the MMM Program shall be set forth in the MMM Program Procedures and local forms and may be amended from time to time as provided under paragraph 4 of this order. This court's Local Rule 9019-2(A)(6) and related administrative order setting compensation rate for mediators shall not apply to mediations under the MMM Program, except for sessions extending beyond the initial two, one-hour sessions.
  3. The Court may modify the MMM Program Procedures and local forms from time to time without prior notice, by publication of a clerk's notice of revised procedures and/or forms on the court website.
  4. Copies of this Administrative Order, the MMM Program Procedures and local forms shall be posted on the court website and copies may be obtained from the Clerk's Office.
  5. The Loss Mitigation Mediation Program procedures and local forms in effect under AO 13-1 shall remain in effect for those cases in which LMM was commenced prior to August 1, 2014. Upon determination by the clerk that no further LMM cases are pending, the forms and procedures shall be removed from the list of current procedures and forms for this court and Administrative Order 13-1 shall be deemed moot.

ORDERED in the Southern District of Florida on July 24, 2014.

  
PAUL G. HYMAN, JR.,  
CHIEF U.S. BANKRUPTCY JUDGE

c: All SD Bankruptcy Judges  
Clerk of Court

## MORTGAGE MODIFICATION MEDIATION PROGRAM PROCEDURES

Revised Effective August 1, 2014 as provided under Administrative Order 14-03

### I. PURPOSE:

These procedures and forms implement the Mortgage Modification Mediation (MMM) program established under Administrative Order 14-03. This program is designed to function as a forum for individual debtors to explore mortgage modification options with their lenders for real property in which the debtors have an interest or are obligated on the promissory note or mortgage. The goal of MMM is to facilitate communication and exchange of information in a confidential setting and encourage the parties to finalize a feasible and beneficial agreement with the assistance and supervision of the United States Bankruptcy Court for the Southern District of Florida. Mortgage Modification Mediation options include modification of a mortgage or surrender of real property owned by an individual debtor(s).

### II. DEBTORS ELIGIBLE TO PARTICIPATE:

Subject to implementation provisions set forth in Administrative Order 14-03, individuals who have filed for bankruptcy protection and currently have a case pending under any chapter are eligible to participate in MMM with respect to real property. The party seeking MMM shall include the address of the relevant property and the last four digits of the mortgage loan number in the MMM motion.

Individuals who seek to modify a mortgage must have paid their bankruptcy filing fee in full prior to filing a motion to participate in MMM.

### III. MORTGAGE MODIFICATION MEDIATION PORTAL AND DOCUMENT PREPARATION SOFTWARE:

In an effort to expedite the exchange of information between the debtor and the lender, the Court has mandated the use of a secure online portal (the “MMM Portal”) and an on-line program that facilitates the preparation of the debtor’s loan modification package (“Document Preparation Software”). Submitting documents to the MMM Portal provides transparency in the mortgage modification process making information immediately available to the parties through a secure internet site. The use of the Document Preparation Software further ensures that the initial submission to the lender is complete and accurate and should expedite the lender’s review. The use of an MMM Portal and Document Preparation Software eliminates the need for multiple submissions of documents that were not received and unnecessary delay based upon incomplete documentation.



All written communication between the parties regarding the mediation must be sent through the MMM Portal only, unless otherwise ordered by the Court. Any litigated matters incidental to the mediation shall be considered as separate matters and not subject to the portal communication requirement. (For example, a motion to compel mediation or motions related to discovery, must be filed in the main bankruptcy case, not through the portal.) The current MMM Portal provider approved by the Court is managed and maintained by Default Mitigation Management LLC (“DMM”). Free training on the use of the MMM Portal shall be available to all attorneys and lenders. The Court’s web page on MMM also includes MMM Portal training materials on mortgage modification, including contact information for the portal vendor and information on the Document Preparation Software. In the event other providers are approved by the Court, those providers will be listed on the Court’s website.

**IV. REQUEST FOR ORDER OF REFERRAL TO MMM:** Unless otherwise ordered by the Court, requests for an order of referral to MMM must be filed within 90 days from the date of filing the Voluntary Petition.

**A. EX PARTE by Attorney Represented Debtor**

- 1. Requirements for filing ex parte motion:** A debtor seeking entry of an order of referral to MMM within 90 days of filing the Voluntary Petition may seek entry of an ex parte order of referral by filing the MMM Local Form “Attorney-Represented Debtor’s Verified Ex Parte Motion for Referral to Mortgage Modification Mediation” (“Ex Parte Motion”) and attach as an exhibit the Local Form “Order Granting Debtor’s Ex Parte Motion for Referral to Mortgage Modification Mediation” (“Ex Parte Order”). The debtor shall serve the Ex Parte Motion and proposed Ex Parte Order on the debtor, trustee, if applicable, lender, lender’s counsel, if applicable, and any other required parties, and upload the Ex Parte Order to the Court’s E-Orders program.

Prior to filing the Ex Parte Motion:

- (a) The non-refundable Document Preparation Software fee of \$40.00 shall have been paid directly to the approved vendor.
- (b) Debtor’s initial loan modification forms shall have been completed using the court-approved Document Preparation Software and ready for signature and submission. This includes collecting Debtor’s required supporting documentation in order to submit Debtor’s initial package (“Debtor’s Prepared Package”) to the Lender for review through the MMM Portal.

- 2. ENTRY OF ORDER OF REFERRAL-DEADLINES FOR SEEKING RECONSIDERATION:** Upon filing of the Ex Parte Motion, the Court shall

enter the Ex Parte Order. The Ex Parte Order shall establish a 14 day deadline for the Lender to seek reconsideration of the Order (“Reconsideration Deadline”). If a timely motion for reconsideration is filed, the Court will promptly schedule a hearing in accordance with Local Rule 9073-1.

- 3. PROCESS FOR SELECTION OF MEDIATOR:** The parties shall, in consultation with one another, select a mediator by the later of (i) the Reconsideration Deadline, or (ii) 14 days after the entry of an order denying the motion for reconsideration, if a timely motion for reconsideration is filed (such period of time, the “Mediator Selection Period”).
- (a) If the parties agree on the selection of a mediator during the Mediator Selection Period, the Debtor shall file the MMM Local Form “Debtor’s Notice of Selection of Mortgage Modification Mediator” (Check Box 1 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).
  - (b) If the lender fails to communicate with the debtor during the Mediator Selection Period, the debtor shall, within seven days, independently select a mediator and file the MMM Local Form “Debtor’s Notice of Selection of Mortgage Modification Mediator” (Check Box 2 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). In this instance, it shall be deemed that the Lender has waived the right to challenge debtor’s selection of a mediator.
  - (c) If the parties attempt to reach agreement on the selection of a mediator, but fail to do so during the Mediator Selection Period, the Debtor shall file the MMM Local Form “Debtor’s Notice of Selection of Mortgage Modification Mediator” (Check Box 3 indicating the impasse), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The clerk shall then randomly select a mediator from the clerk’s Mediation Register pursuant to Local Rule 9019-2(B)(3), without the necessity of a hearing. The clerk shall serve notice of the mediator selection on the required parties using the MMM Local Form “Notice of Clerk’s Designation of Mortgage Modification Mediator”. Local Rule 9019-2(B) shall apply to any challenge to the clerk’s designation of mediator.

**B. FILING A REQUEST OUT OF TIME ON NEGATIVE NOTICE:**

1. An attorney-represented debtor seeking to initiate MMM later than 90 days from the date of filing the Voluntary Petition, must file the MMM Local Form “Attorney-Represented Debtor’s Verified “Out of Time” Motion for Referral to Mortgage Modification Mediation” (“Out of Time Motion”), on notice to the lender and any co-obligor, co-borrower or third party whose participation is required, and must attach as an exhibit the MMM Local Form “Order Granting Debtor’s Verified “Out of Time” Motion for Referral to Mortgage Modification Mediation” (“Order”). A Certificate of Service must also be filed pursuant to Local Rule 2002-1(F).
2. Prior to filing the Out of Time Motion:
  - (a) The non-refundable Document Preparation Software fee of \$40.00 shall have been paid directly to the approved vendor.
  - (b) Debtor’s initial loan modification forms shall have been completed using the court-approved Document Preparation Software and ready for signature and submission. This includes collecting debtor’s required supporting documentation in order to submit debtor’s initial package (“Debtor’s Prepared Package”) to the lender for review through the LMM Portal.
3. The lender shall have 14 days from the date of service of debtor’s Out of Time Motion to file a response. Failure by the lender or other party, who has been properly served with the Out of Time Motion to file a timely response, shall be deemed consent to the entry of the Order. Within seven days after the expiration of the 14 day response deadline, the debtor’s attorney shall file the MMM Local Form “Certificate of No Response and Request for Entry of Order”. The Lender may also file the MMM Local Form “Lender’s Consent to Attend and Participate in Mortgage Modification Mediation” at any time after filing of the Negative Notice Motion.
4. If the lender or other party served with the Out of Time Motion files a timely response, the debtor’s attorney shall file the MMM Local Form “Certificate of Contested Matter” and the Court will promptly schedule a hearing in accordance with the procedures set forth in Local Rule 9073-1.

5. If the Court grants the debtor's Out of Time Motion, the Order shall establish a 14 day deadline for selection of a mediator in accordance with the Section IV. A. 3. above.

**C. BY A SELF-REPRESENTED DEBTOR:**

1. An eligible debtor seeking to participate in MMM who is not represented by an attorney, must file the MMM Local Form "Self-Represented Debtor's Verified Motion for Referral to Mortgage Modification Mediation" ("Pro Se Motion"), which will promptly be set for hearing by the Court in accordance with the procedures contained in Local Rule 9073-1.
2. If the debtor is seeking waiver of the mediation fee (see section XII.3.a. below), the debtor shall include this request in the Pro Se Motion. If the use of the MMM Portal or the Document Preparation Software creates an undue hardship because the debtor does not have access to a computer, the Debtor shall also include a request in the Pro Se Motion to exchange documents with the Lender by fax or U.S. Mail.
3. The debtor must serve the Pro Se Motion and proposed MMM Local Form "Order Granting Self-Represented Debtor's Motion for Referral to Mortgage Modification Mediation" ("Pro Se Order") by U.S. Mail and, if possible, also by email, on the lender, the lender's counsel, if known, and any other party required to participate in the mediation, and file a Certificate of Service pursuant to Local Rule 2002-1(F).
4. A response to the debtor's Pro Se Motion must be filed within 14 days from the date of service of the motion on the lender.
5. If the Debtor's Pro Se Motion is granted, the Pro Se Order shall establish a 14 day deadline for the parties to agree upon the selection of a mediator.
6. Process for Selection of Mediator:
  - (a) Within seven days after expiration of the 14 day deadline, if the parties agree on the selection of a mediator, the debtor shall file the MMM Local Form "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 1 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).

- (b) If the parties fail to agree, within seven days after expiration of the 14 day deadline, the Debtor shall file the MMM Local Form “Debtor’s Notice of Selection of MMM Mediator” (Check Box 3 indicating the impasse), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The clerk shall then randomly select a mediator from the clerk’s Mediation Register pursuant to Local Rule 9019-2(B)(1), without the necessity of a hearing. The clerk shall serve notice of the mediator selection on the required parties using the MMM Local Form “Notice of Clerk’s Designation of Mortgage Modification Mediator”. Local Rule 9019-2(B)(3) shall apply to any challenge to the clerk’s designation of mediator.

**D. BY A LENDER:**

A lender may request referral to MMM by filing and serving:

1. **Attorney-represented debtor** - upon the debtor and debtor’s counsel, a motion requesting referral to MMM, together with a proposed order that substantially conforms to the MMM Local Form Ex Parte Order, except the provisions in paragraph one permitting reconsideration of the order shall not be included.
2. **Self-represented debtor** - upon the Debtor a motion requesting referral to MMM, together with a proposed order that substantially conforms to the MMM Local Form Pro Se Order.

The lender must file a Certificate of Service pursuant to Local Rule 2002-1(F). The debtor shall have 14 days from the date of service of the motion to file a written response. If the debtor fails to file a response objecting to the Lender’s motion, the Court may enter the Order or, if the debtor is not represented by counsel, the Court will set the matter for hearing in accordance with the procedures set forth in Local Rule 9073-1.

If the lender’s motion for referral to MMM is granted, the Order shall establish a 14 day deadline for the parties to agree upon the selection of a mediator. Within seven days after expiration of the 14 day deadline, if the parties agree on the selection of a mediator, the Debtor shall file the MMM Local Form “Debtor’s Notice of Selection of MMM Mediator” (Check Box 1 and insert mediator name and contact information), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).

If the parties fail to agree, within seven days after expiration of the 14 day deadline, the Debtor shall file the MMM Local Form “Debtor’s Notice of

Selection of MMM Mediator” (Check Box 3 indicating the impasse), serve a copy of the Notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The clerk shall then randomly select a mediator from the clerk’s Mediation Register pursuant to Local Rule 9019-2(B)(1), without the necessity of a hearing. The clerk shall serve notice of the mediator selection on the required parties using the MMM Local Form “Notice of Clerk’s Designation of Mediator”. Local Rule 9019-2(B)(3) shall apply to any challenge to the clerk’s designation of mediator.

**E. BY THE BANKRUPTCY COURT:**

The Court may order the assignment of a mortgage modification matter to MMM upon the Court’s own motion.

**V. ADDITIONAL PARTIES:**

CO-OBLIGORS/CO-BORROWERS OR OTHER THIRD PARTIES: Any co-obligor, co-borrower or other third party must participate in the MMM process. If the participation of a co-obligor, co-borrower or other third party is necessary, any party may request that such co-obligor, co-borrower or other third party participates in MMM. The co-obligor, co-borrower or other third party shall sign, and the debtor or attorney for the debtor shall file, simultaneously with the debtor’s Ex Parte Motion, or Pro-Se Motion, the MMM Local Form “Third Party’s Consent to Attend and Participate in Mortgage Modification Mediation”.

**VI. ORDER OF REFERRAL TO MORTGAGE MODIFICATION MEDIATION:**

Upon entry of the Order the moving party shall serve the Order on the required parties, including the designated mediator, once determined, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The moving party shall also upload a copy of the Order to the MMM Portal within seven days after filing of the Debtor’s Notice of Selection of Mortgage Modification Mediator (or Notice of Clerk’s Designation of Mortgage Modification Mediator) or the lender’s registration on the MMM Portal, whichever occurs later, unless by Court order, the debtor has been excused from using the MMM Portal. The parties are required to comply with all deadlines set forth in the Order. However, any deadlines imposed by the Order may be extended by Court order or by stipulation of the parties.

The parties are required to participate in MMM in good faith or be subject to possible sanctions by the Court, including vacating the Order.

**A. Lender Requirements:**

Within seven days after entry of the Order (or after all motions for reconsideration have been heard and determined), the lender, if not already registered on the MMM Portal, shall ensure that it is registered, and if the lender

has counsel, that the lender's counsel is registered as well. (Registration on the MMM Portal is a one-time event - i.e., once the lender is registered on the MMM Portal, the lender will not have to register again).

As part of lender's initial registration on the MMM Portal, lender shall provide all of the lender's initial mortgage modification requirements ("Lender's Initial Package") to the MMM Portal vendor so that the MMM Portal vendor may post same to the MMM Portal on behalf of lender. Lender's Initial Package shall specify the forms and documentation the Lender requires to initiate a review of debtor's request for mortgage modification options.

If the lender transfers the loan, the lender must provide a copy of the Order to the new holder of the loan ("Successor Lender"), and the Successor Lender will be obligated to comply with all terms of the Order.

Within seven days after delivery of the information provided for in section VI.B. below, the lender shall, on the MMM Portal, (i) acknowledge receipt of debtor's information and advise debtor of any additional or missing information required for lender to proceed with its review; and (ii) designate its single point of contact and its outside legal counsel, if any. Such lender's counsel or representative shall have the authority (within the investor's guidelines) to settle and will attend and continuously participate in all MMM conferences in this case. The lender shall timely underwrite the loan modification request.

**B. Debtor Requirements:**

Within seven days after filing the Debtor's Notice of Selection of Mortgage Modification Mediator (or Notice of Clerk's Designation of Mortgage Modification Mediator) or the lender's registration on the MMM Portal, whichever occurs later, the debtor shall upload and submit through the MMM Portal, Debtor's Prepared Package, together with any additional forms or documents identified in Lenders Initial Package, and pay a non-refundable MMM Portal submission fee in the amount of \$25.00.

If the debtor has been excused by Court order from using the MMM Portal, then within seven days after entry of the Order, the debtor shall mail or fax to the lender and the mediator the Debtor's Prepared Package, with any additional forms or documents that the lender has, in writing, advised the debtor are required.

If the debtor fails to comply with these requirements, the Court will consider vacating the Order upon motion by the lender and after notice and hearing.

**C. Mediator Requirements:**

The designated mediator shall, within seven days of designation, or within seven days after the debtor has complied with requirements in section VI.B above, log in to the MMM Portal to facilitate the exchange of information and documentation between debtor and lender in an effort to perfect the documentation needed for lender to complete its analysis of debtor's mortgage modification options.

If the debtor has been excused from using the MMM Portal, the mediator shall contact the debtor by phone or mail and contact the lender in which ever manner the lender and mediator agree to communicate.

The mediator shall schedule the initial MMM conference no later than seven days after the mediator determines that the lender has received and reviewed all the required information through the MMM Portal, or from the debtor if use of the MMM Portal has been excused. In the event the mediator cannot determine that the lender has received and reviewed all the required information, the mediator shall schedule the initial MMM conference within 90 days of entry of the Order. The initial MMM conference shall not exceed one hour. The mediator shall report the scheduling of any MMM conference(s) on the MMM Portal.

#### **VII. MORTGAGE MODIFICATION MEDIATION CONFERENCE:**

All parties are required to attend the MMM conference and must be authorized to settle all matters requested in the motion.

- A. LENDER:** The lender and lender's representative may participate in the MMM conference by telephone.
- B. DEBTOR:**
  - 1.** A debtor represented by an attorney, and any co-obligor, co-borrower or other third party obligated on the note or mortgage, may also participate in the MMM conference by telephone provided they are physically present with debtor's attorney and present identification to debtor's attorney during all MMM conferences. **The debtor shall provide a foreign language interpreter, if necessary, at the debtor's own expense.**
  - 2.** A self-represented debtor, and any co-obligor, co-borrower or other third party obligated on the note/mortgage, must be physically present with the mediator at the mediator's selected location and present identification to the Mediator for all MMM conferences. **The debtor**



shall provide a foreign language interpreter, if necessary, at the debtor's own expense.

**C. SETTLEMENT AGREEMENT:**

All parties attending the MMM conference shall be ready, willing and able to sign a binding settlement agreement at the MMM conference and have the ability to scan, send and receive documents by facsimile, email or other electronic means at the time of the MMM conference.

**D. PROCEDURE:**

The initial MMM conference shall not exceed one hour. In the event the parties are unable to reach an agreement and require a second MMM conference, the mediator shall schedule a final MMM conference not later than 30 days thereafter. The second MMM conference shall not exceed one hour.

Notwithstanding, the mediator may continue the MMM conference, if necessary, beyond the two, one-hour conferences upon written agreement of the parties.

MMM shall be concluded not later than 150 days from the date of the Order, unless extended by written consent on the portal, or, as provided in Section VI, by court order or by stipulation of the parties.

**E. CONFIDENTIAL COMMUNICATION:**

All communication and information exchanged during the MMM conference shall remain confidential and shall be inadmissible in any subsequent proceeding pursuant to Federal Rules of Evidence 408 and Chapter 44 of the Florida Statutes.

**VIII. EFFECT OF MEDIATION:**

- A. AUTOMATIC STAY:** The automatic stay will be modified to the extent necessary to facilitate MMM pursuant to the Order.

Once the Order has been entered:

1. Any pending motion for stay relief with respect to property that is subject to MMM shall be continued until such time as the MMM has been concluded; the pendency of MMM constitutes good cause and compelling circumstances under 11 U.S.C. §362(e) to delay entry of any final decision on a pending request for stay relief. Any lender seeking

relief prior to the conclusion of the MMM must file a motion requesting a hearing, setting forth the reasons why relief must be considered prior to conclusion of the MMM.

2. No motion for stay relief with respect to the property subject of the MMM may be filed on an ex parte basis.

- B. **NO DELAY:** The referral of a matter to MMM does not relieve the parties from complying with any other court orders or applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Administrative Orders or Local Rules. Notwithstanding a mortgage modification matter being referred to MMM, the case shall not be stayed or delayed without further order of the Court.
- C. If the debtor's case is otherwise in a posture for administrative closing, the case shall remain open during the pendency of MMM, unless otherwise ordered by the Court.

#### IX. POST MORTGAGE MODIFICATION MEDIATION:

In the event the parties reach a final resolution or, if no agreement has been reached, the mediator shall report the results of the MMM on the MMM Portal not later than seven days after the conclusion of the final MMM conference. The Mediator shall also complete and file the MMM Local Form "Final Report of Mortgage Modification Mediator" ("Final Report") with the Court, either electronically or by conventional filing, not later than two business days following entry of the "Final Report" data on the MMM Portal.

Within 14 days of the filing of the Final Report, if the debtor and the lender have reached a resolution through the MMM conference, the debtor's attorney shall file the MMM Local Form "Ex-Parte Motion to Approve Mortgage Modification Mediation Agreement with Lender" and upload to the Court's E-Orders program the proposed MMM Local Form "Order Granting Motion to Approve Mortgage Modification Agreement with Lender". The debtor shall serve the ex-parte motion and proposed order on all required parties and file a certificate of service pursuant to Local Rule 2002-1(F).

If the debtor is not represented by an attorney, and the debtor and the lender have reached a resolution through the MMM conference, within 14 days of the filing of the Final Report, the debtor shall file the MMM Local Form "Self-Represented Debtor's Motion to Approve Mortgage Modification Mediation Agreement with Lender", and the Court will promptly schedule a hearing in accordance with the procedures set forth in Local Rule 9073-1. The Debtor shall serve the motion on all required parties and file a certificate of service pursuant to Local Rule 2002-1(F).

The parties shall formalize any required legal documents in a timely fashion thereafter.

**X. CHAPTER 13 PLAN LANGUAGE:** When mortgage modification is sought as part of MMM in a chapter 13 case, the debtor shall include the following language in “Other Provisions” of the chapter 13 plan:

“The debtor has filed a Verified Motion for Referral to MMM with \_\_\_\_\_ (“Lender”), loan number \_\_\_\_\_, for real property located at \_\_\_\_\_. The parties shall timely comply with all requirements of the Order of Referral to MMM and all Administrative Orders/Local Rules regarding MMM. While the MMM is pending and until the trial/interim payment plan or the permanent mortgage modification/permanent payment is established by the parties, the debtor has included a post-petition plan payment, absent Court order to the contrary, of no less than the required 31% of the debtor’s gross monthly income (after deducting any amount paid toward HOA fees due for the property) as a good faith adequate protection payment to the lender. All payments shall be considered timely upon receipt by the trustee and not upon receipt by the lender.

Until the MMM is completed and the Final Report of Mortgage Modification Mediator is filed, any objection to the lender’s proof of claim on the real property described above shall be held in abeyance as to the regular payment and mortgage arrearage stated in the proof of claim only. The debtor shall assert any and all other objections to the proof of claim prior to confirmation of the plan or modified plan.

If the debtor, co-obligor/co-borrower or other third party (if applicable) and the lender agree to a settlement as a result of the pending MMM, the debtor will file the MMM Local Form “Ex Parte Motion to Approve Mortgage Modification Agreement with Lender” (or Self-Represented Debtor’s Motion to Approve Mortgage Modification Agreement with Lender) no later than 14 calendar days following settlement. Once the settlement is approved by the Court, the debtor shall immediately amend or modify the plan to reflect the settlement and the lender shall amend its Proof of Claim to reflect the settlement, as applicable.

If a settlement is reached after the plan is confirmed, the debtor will file a motion to modify the plan no later than 30 calendar days following approval of the settlement by the Court and the Lender shall have leave to amend its Proof of Claim to reflect the settlement reached after confirmation of the plan. The parties will then timely comply with any and all requirements necessary to complete the settlement.

In the event the debtor receives any financial benefit from the lender as part of any agreement, the debtor shall immediately disclose the financial benefit to the Court and the trustee and amend or modify the plan accordingly.

If the lender and the debtor fail to reach a settlement, then no later than 14 calendar days after the mediator's Final Report is filed, the debtor will amend or modify the plan to (a) conform to the lender's Proof of Claim (if the lender has filed a Proof of Claim) or (b) provide that the real property will be surrendered. If the amended or modified plan provides that the real property is to be surrendered, then the obligations to the lender will be considered "treated outside the plan" and the lender shall have in rem relief from the automatic stay as to the real property being surrendered. Notwithstanding the foregoing, lender may file a motion to confirm that the automatic stay is not in effect as to the real property.

Confirmation of the plan will be without prejudice to the assertion of any rights the lender has to address payment of its Proof of Claim."

**XI. MORTGAGE MODIFICATION MEDIATOR:**

Unless otherwise agreed to by the parties, the mediator shall be selected from the Clerk's Register of Mediators maintained under Local Rule 9019-2(A)(1).

- 1. Registration:** Each mediator shall be registered on the MMM Portal.
- 2. Standards of Professional Conduct.** The mediator shall be governed by the standards of professional conduct set forth in the Florida Rules for Certified and Court-appointed Mediators and shall have judicial immunity in the same manner and to the same extent as a judge.
- 3. Compensation:** Mediators shall be paid equally by the parties as follows:
  - (a) Unless the debtor's case has been accepted as a *pro bono* case, the debtor shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within seven days of designation of the mediator. A debtor may request a mediator to serve pro bono only if debtor's income is less than 150% above the poverty level.
  - (b) The lender shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within seven days of the designation of mediator.
  - (c) The fee includes the mediator's assistance in determining all documentation is uploaded to the MMM Portal, or, for a debtor with no computer, otherwise exchanged between the debtor and lender, scheduling of the mediation, and participation in a maximum of two, one-hour mortgage modification conferences.

- (d) For sessions that extend beyond the initial two, one-hour sessions, the mediator shall be compensated in accordance with Local Rule 9019-2(A)(6).
- (e) Fees for MMM conferences that extend beyond the initial two, one-hour sessions shall be divided equally between the parties, except in the case of a *pro bono* matter in which case the mediator will be paid one half of his or her fee by the lender and the balance will be credited to the mediator's *pro bono* commitment. Payment shall be made by the debtor and the lender prior to the beginning of each successive MMM conference. If the debtor is not represented by an attorney, the debtor shall bring a money order or cashier's check to the MMM conference in an amount equal to the debtor's share of the one hour session. Any balance owed for a session that extends beyond the pre-paid session shall be paid as soon as possible, or within two business days following conclusion of the final session.

**XII. COMPENSATION OF DEBTOR'S COUNSEL:**

Without application to the Court, attorneys for debtors shall be permitted to charge an attorney's fee not to exceed \$2500.00, and \$100.00 in costs for MMM, subject to the compensation requirements for the chapter under which the case is filed. In chapter 13 cases, charges shall be made in accordance with the "Guidelines for Compensation For Professional Services or Reimbursement of Expense by Attorneys for Chapter 13 Debtors Pursuant to Local Rule 2016-1(B)(2)(a)".

- 1. The \$2500.00 fee shall include:
  - (a) Filing of the Motion and proposed Order;
  - (b) Preparation of all forms required for mediation;
  - (c) Filing of other required pleadings and preparation of proposed orders, and settlement papers, as applicable;
  - (d) Communicating with the lender and the mediator, including communications through the portal; and
  - (e) Attendance at all MMM conferences and Court hearings.
  - (f) Review of all modified loan documents.
- 2. In a chapter 13 case the \$2500.00 fee shall be paid as follows:

- (a) The sum of \$1500.00 shall be presumed to compensate debtor's attorney for initial services relating to MMM, including but not limited, collecting and uploading documents to the MMM Portal, drafting and filing the motion and communicating with the lender and mediator.
- (b) The remaining balance of \$1000.00 shall become payable once the mediator has scheduled the initial MMM conference.
- (c) If modification of a chapter 13 plan after confirmation becomes necessary, the debtor's attorney may charge an additional \$500.00 in fees and \$25 in costs in accordance with the "Guidelines for Compensation for Professional Services or Reimbursement of Expense by Attorneys for Chapter 13 Debtors Pursuant to Local Rule 2016-1(B)(2)(a)".

# LMM UNDER USBC SDFL AO 11-1 FOR DEBTOR REPRESENTED BY ATTORNEY – PART 1: OBTAINING THE ORDER

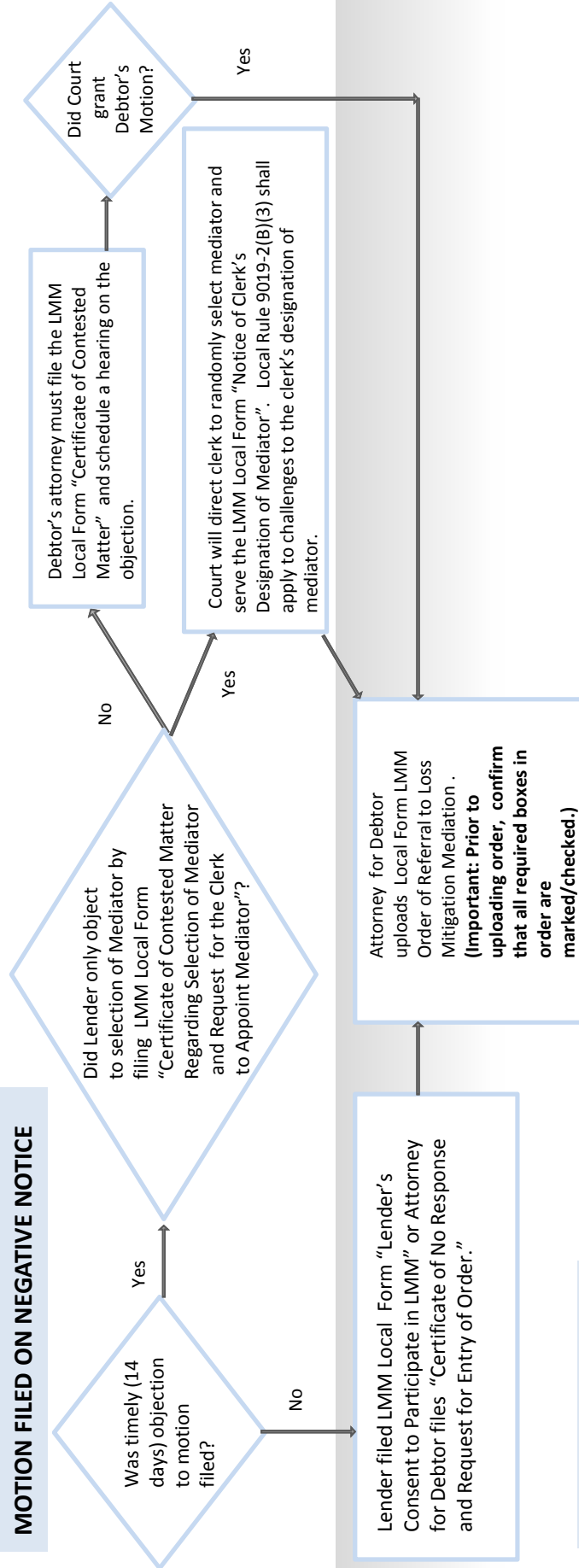
## PREPARATION FOR FILING THE MOTION

Before filing LMM Local Form "Attorney Represented Debtor's Verified Motion for Referral to Loss Mitigation Mediation" Debtor's Attorney must:

1. Determine if debtor is eligible to seek LMM under AO 13-1. If so, you may proceed to seek a referral to LMM.
2. Register as Attorney for Debtor on LMM Portal and determine if Lender is registered.
3. Determine if pro bono status will be sought and select proposed mediator.
4. Collect fees from Debtor for LMM Portal and Software, and mediator fee, unless pro bono status is sought.
5. Pay Document Preparation Software fee of \$40 to the LMM approved vendor. Use software to prepare and generate Debtor's initial loan modification package and collect all required supporting documentation so that "Debtor's Prepared Package" is ready for signature and submission.
6. If applicable, obtain LMM Local Form "Consent to Attend and Participate in Loss Mitigation Mediation" signed by each co-obligor/co-borrower/third party.

LMM Local Form "Attorney Represented Debtor's Verified Motion for Referral to Loss Mitigation Mediation" must be filed within 90 days of filing petition (and served on 14 days negative notice on required parties).

## MOTION FILED ON NEGATIVE NOTICE



## ORDER ENTERED

PROCESS CONTINUES TO PART 2: "EXCHANGE OF INFORMATION & MEDIATION"

LMM UNDER USBC SDFL AO 11-1 FOR DEBTOR REPRESENTED BY ATTORNEY – PART 2: EXCHANGE OF INFORMATION & MEDIATION

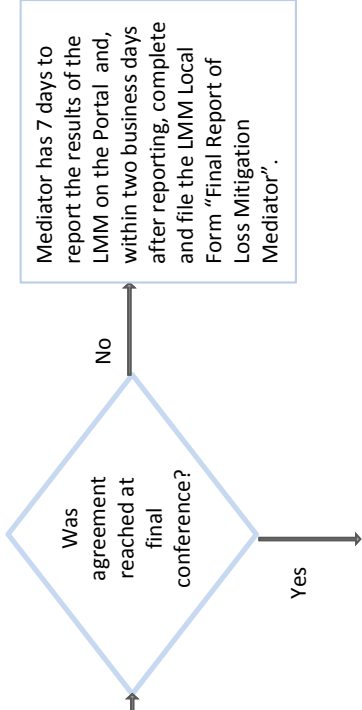
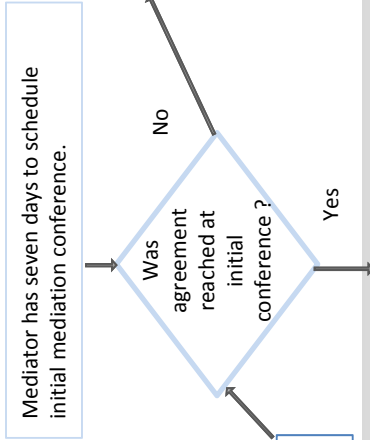
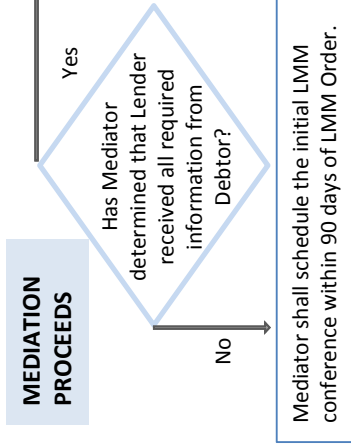
ORDER ENTERED. LMM must be completed not later than 150 days from the date of Order unless extended by order or by stipulation of the parties.

**LENDER:** 7 days after entry of order → Lender and, if applicable, Lender's counsel, must register with the approved LMM Portal and remit nonrefundable \$300 fee to mediator.

**DEBTOR'S ATTORNEY:** 7 days after entry of order or registration of lender whichever is later → Debtor's attorney remits to the LMM Portal the required non-refundable portal submission fee in the amount \$25.00, and uploads Debtor's "Completed Package" consisting of Debtor's Prepared Package, a copy of the LMM Order; and any additional lender-specific information identified by Lender on the LMM Portal, assigns mediator to case on the portal and, unless pro bono, remits \$300 nonrefundable fee to mediator.

**MEDIATOR:** 7 days after entry of order → Mediator must use the LMM Portal to facilitate the exchange of information and documentation between Debtor and Lender.

MEDIATION PROCEEDS



Debtor's attorney files and serves the LMM Local Form "Ex Parte Motion to Approve Loss Mitigation Agreement with Lender" and uploads the LMM Local Form "Order Granting Motion to Approve Loss Mitigation Agreement with (Lender)" no later than 14 days following the filing of the LMM Local Form "Final Report of Loss Mitigation Mediator".

ORDER ENTERED

Debtor's attorney is required to serve a copy of the order on all parties to the mediation.

The parties shall also seek any necessary Court approval and formalize any required legal documents in a timely fashion. If Chapter 13 case where mortgage modification is sought, LMM Guideline Section XI. "CHAPTER 13 PLAN Language" must be followed.



**SOUTHERN DISTRICT CHAPTER 13 PLAN LANGUAGE REGARDING MMM**

When mortgage modification is sought as part of MMM in a Chapter 13 case, the debtor shall include the following language in “Other Provisions” of the Chapter 13 plan:

The Debtor has filed a Verified Motion for Referral to MMM with \_\_\_\_\_ (“Lender”), loan number \_\_\_\_\_, for Real Property located at \_\_\_\_\_. The parties shall timely comply with all requirements of the Order of Referral to MMM and all Administrative Orders/Local Rules regarding MMM. While the MMM is pending and until the trial/interim payment plan or the permanent mortgage modification/permanent payment is established by the parties, the debtor has included a post-petition plan payment, absent Court order to the contrary, of no less than the required 31% of the debtor’s gross monthly income (after deducting any amount paid toward HOA fees due for the property) as a good faith adequate protection payment to the lender. All payments shall be considered timely upon receipt by the trustee and not upon receipt by the lender.

Until the MMM is completed and the Final Report of Mortgage Modification Mediator is filed, any objection to the lender’s proof of claim on the real property described above shall be held in abeyance as to the regular payment and mortgage arrearage stated in the proof of claim only. The debtor shall assert any and all other objections to the proof of claim prior to confirmation of the plan or modified plan.

If the debtor, co-obligor/co-borrower or other third party (if applicable) and the lender agree to a settlement as a result of the pending MMM, the debtor will file the MMM Local Form “Ex Parte Motion to Approve Mortgage Modification Agreement with Lender” (or Self-Represented Debtor’s Motion to Approve Mortgage Modification Agreement with Lender) no later than 14 calendar days following settlement. Once the settlement is approved by the Court, the debtor shall immediately amend or modify the plan to reflect the settlement and the lender shall

amend its Proof of Claim to reflect the settlement, as applicable.

If a settlement is reached after the plan is confirmed, the debtor will file a motion to modify the plan no later than 30 calendar days following approval of the settlement by the Court and the Lender shall have leave to amend its Proof of Claim to reflect the settlement reached after confirmation of the plan. The parties will then timely comply with any and all requirements necessary to complete the settlement. In the event the debtor receives any financial benefit from the lender as part of any agreement, the debtor shall immediately disclose the financial benefit to the Court and the trustee and amend or modify the plan accordingly.

If the lender and the debtor fail to reach a settlement, then no later than 14 calendar days after the mediator's Final Report is filed, the debtor will amend or modify the plan to (a) conform to the lender's Proof of Claim (if the lender has filed a Proof of Claim) or (b) provide that the real property will be surrendered. If the amended or modified plan provides that the real property is to be surrendered, then the obligations to the lender will be considered "treated outside the plan" and the lender shall have in rem relief from the automatic stay as to the real property being surrendered. Notwithstanding the foregoing, lender may file a motion to confirm that the automatic stay is not in effect as to the real property.

Confirmation of the plan will be without prejudice to the assertion of any rights the lender has to address payment of its Proof of Claim."

# DMM Portal

## Quick Setup Guide for Creditors

### Step 1. Create Accounts

- Both the servicer and creditor's counsel must set up an account on the DMM Portal. (There is no fee for setting up an account)
- To set up the accounts, please go to [www.dclmwp.com](http://www.dclmwp.com)
- Under "Create an Account" select "Servicers" or "Default Attorneys" as appropriate and click [Go to Registration](#)
- Complete the registration form and click [Submit Account](#)
- Your registration request will be reviewed, validated and approved and you will receive an email confirming your account approval
- There is no fee to set up an account
- You only need to register once

### Step 2. Provide Servicer Information to DMM

- In order to complete your setup on the DMM Portal, servicer will need to provide the following information to DMM:
  - List of any additional Servicer Accounts to be created
  - List of Default Attorneys used in FLSB
  - Any proprietary forms or documents required to be submitted by debtors
  - Servicer address for Line 5 of IRS Form 4506-T

**Please refer to the attached Setup Checklist for Creditors for details.**

**Your registration cannot be completed unless and until you provide this information in addition to completing your registration.**

Once your setup is complete, debtor's attorney will be able to submit new accounts to you via the DMM Portal. A copy of the DMM Portal User Manual is available for download from the DMM Portal (see "Tools" section of the site after you have logged in). If you would like to schedule a demo of the DMM Portal, please email DMM at [support@defaultmitigation.com](mailto:support@defaultmitigation.com) or call 1-800-481-1013.

# DMM Portal

## Setup Checklist for Creditors

In order to complete a servicer's set up on the DMM Portal, please email the following information to [support@defaultmitigation.com](mailto:support@defaultmitigation.com). If you have any questions, please call DMM at 1-800-481-1013.

### 1. List of Additional Servicer User Accounts

Provide to DMM the following information for each servicer associate (in addition to the main Portal Admin who registered the servicer) who will need access to the DMM Portal (use attached form entitled "Creditor Setup – DMM Portal"):

- First Name
- Last Name
- Email Address
- Notifications<sup>1</sup> - Assigned Accounts Only or All

### 2. List of Creditor's Counsels Used in FLSB

Provide to DMM the following information for each creditor's counsel used in FLSB<sup>2</sup> (use attached form entitled "Creditor's Counsel Setup – DMM Portal"):

- Firm Name
- Contact Name
- Contact Phone Number
- Contact Email Address

### 3. Copies of Any Proprietary Forms or Instructions

The DMM Portal will automatically display the required forms and documents a debtor's attorney must submit to participate in the loss mitigation mediation program including:

- Borrower's Authorization
- HAMP RMA
- IRS Form 4506-T
- Dodd-Frank Certification
- Uniform Borrower Assistance Form 710 (for Fannie and Freddie loans only)
- Proof of Income Documentation<sup>3</sup>

If the servicer has any proprietary forms or instructions, please provide those documents to DMM. DMM will make those forms automatically available to the debtor's attorney upon their selection of the servicer and debtor's attorney will be instructed to provide these forms to the servicer.

### 4. Address to be Entered on Line 5 of IRS Form 4506-T

Because the DMM Portal will provide debtor's attorney with an IRS Form 4506-T to complete, DMM needs the servicer's address to be entered on Line 5 of the form to ensure its completeness (use attached form entitled "Creditor Setup – DMM Portal").

<sup>1</sup> Users can be set up to receive email notifications for all accounts or just accounts to which a user is assigned to.

<sup>2</sup> The DMM Portal will enable the servicer to assign any accounts on the DMM Portal to their local counsel so they may view all information submitted with respect to any account. Before an attorney can be assigned to an account, however, the servicer must provide DMM with a list of approved creditor's counsels. Each creditor's counsel must also register on the DMM Portal as a "default attorney".

<sup>3</sup> The DMM Portal will customize the list of supporting income documentation needed based on the household income profile provided by the debtor's attorney.

## Creditor Setup – DMM Portal

*\* After you have completed this form, please email to [support@defaultmitigation.com](mailto:support@defaultmitigation.com). Call 1-800-481-1013 with any questions.*

**Creditor Address to be Entered on Line 5 of IRS Form 4506-T**

*\* This information will be provided to the debtor's attorney so they can properly complete the form*

Name:	
Address:	
Phone Number:	

**Enter the information below for each user account you wish to create:**

*\* Each user below will have access to the creditor's Portal*

[illegible]

<sup>1</sup> All users will receive email notifications at their registered email address. Select whether you want the user to receive all notifications on all accounts processed through the DMM Portal or just received email notifications on those accounts to which the user is specifically assigned.

## Creditor's Counsel Setup – DMM Portal

*\* After you have completed this form, please email to [support@defaultmitigation.com](mailto:support@defaultmitigation.com). Call 1-800-481-1013 with any questions.*

**Enter the information below for any creditor's counsels you wish to add to the DMM Portal:**

*\* DMM will contact each counsel and request they sign up and be available for assignment*

[illegible]

## 2015 ALEXANDER L. PASKAY MEMORIAL BANKRUPTCY SEMINAR

DATE: September 10, 2014

AMENDED: October 6, 2014

FROM: US Bankruptcy Court, Northern District of Florida

TO: Participants in Mortgage Modification Mediations in Bankruptcy

SUBJECT: Uniform Mortgage Modification Mediation Procedures in the Bankruptcy Court for the Northern District of Florida

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Effective September 22, 2014, the Bankruptcy Court for the Northern District of Florida is adopting uniform mortgage modification mediation procedures (MMM). The following general terms apply:

1. MMM is available in all cases and for any type of real property.
2. A motion seeking MMM shall include, on the first page, a complete property address of the relevant property and the last four digits of the mortgage loan number(s). If this information is not included, the motion will be denied without prejudice, or abated until an amended motion containing the required information is filed.
3. No negative notice is required for a motion seeking MMM, but lenders may seek reconsideration for cause within 14 days of entry of an order directing MMM.
4. A motion seeking MMM shall be filed within 90 days of the filing or conversion of the case. The Court will enter an order directing MMM on timely filed motions. If the MMM motion is not timely filed, the Court will set a hearing and will grant the request only if good cause is demonstrated for the delay.
5. The parties will conclude the MMM process within 150 days of the filing or conversion of the case, unless that time is enlarged by written consent on the portal, by stipulation of the parties, or by Court order.
6. Parties shall have 14 days after the entry of the order directing MMM to jointly select a mediator qualified pursuant to [Standing Order No. 20 Guidelines and Procedures for Mortgage Modification Mediators](#) or to object to the mediator selection process. If the parties cannot agree on a mediator, the Debtor will select a mediator, and the lender may file an objection within 7 days. If a timely objection to a mediator is filed, the Chapter 12 or 13 Trustee, or the Clerk in a Chapter 7 or 11, case will select the mediator from the Court's approved Mediator list, on a random, rotating basis.
7. Both Debtor and Lender each shall pay \$250.00 directly to the mediator within seven days of the designation of the mediator. Parties also shall equally pay the Mediator for any additional hourly fees incurred from MMM conferences that extend beyond two, one-hour sessions.
8. In an effort to expedite the exchange of information between the debtor and the lender, the Court has mandated the use of a secure online portal (the "MMM Portal")(e.g. <https://www.dclmwp.com/Home>) for submission of documents to initiate the MMM and follow

guidelines included in the Court's order directing MMM. Submitting documents to the MMM Portal provides transparency in the mortgage modification process making information immediately available to the parties. The Court encourages parties to consider using an on-line program that facilitates the preparation of the debtor's loan modification package ("Document Preparation Software"). The use of Document Preparation Software may further ensure that the initial submission to the lender is complete and accurate and expedite the lender's review. The use of an MMM Portal, especially together with Document Preparation Software, should eliminate the need for multiple submissions of documents that were not received and unnecessary delay based upon incomplete documentation

9. The parties may communicate outside the Portal orally, but all written communication shall occur through the Portal.

10. Parties may submit a proposed order simultaneously with a motion seeking approval of a *temporary* MMM agreement without need of negative notice or hearing.

11. Parties may use negative notice when filing a motion seeking approval of a *permanent* MMM agreement.

12. An order approving a permanent MMM agreement (i) shall be in a format that can be recorded in the public records of the county where the relevant property is located, and (ii) should be recorded by the Debtor within 90 days of the entry of the order, unless the parties agree otherwise.

13. In Chapter 12 and 13 cases, Debtors seeking MMM must provide adequate protection as directed in the Court's order directing MMM.

14. In Chapter 12 and 13 cases, the Court may confirm a plan of reorganization subject to pending MMM.

15. In Chapter 12 and 13 cases, Debtors seeking MMM must provide adequate protection to the lenders. Unless otherwise ordered by the Court: (1) for homestead properties, the Debtor must pay the Chapter 12 or 13 Trustee the lesser of (a) 31% of their gross disposable income (after deducting homeowner association fees), or (b) the normal monthly contractual mortgage payment; (2) for non-homestead property, the Debtor shall pay to the Chapter 12 or 13 Trustee 75% of all rental income generated by the property. The Trustee shall hold the funds pending either further order of the Court or a joint stipulation of the parties. In addition, with Chapter 12 and 13 cases, the Court may confirm a plan of reorganization subject to pending MMM.

16. Individuals who seek to modify a mortgage must have paid their bankruptcy filing fee in full prior to filing a motion to participate in MMM.

17. Once the Order authorizing MMM has been entered: 1. Any pending motion for stay relief with respect to property that is subject to MMM shall be continued until such time as the MMM has been concluded; the pendency of MMM constitutes good cause and compelling circumstances under 11 U.S.C. §362(e) to delay entry of any final decision on a pending request for stay relief. Any lender seeking relief prior to the conclusion of the MMM must file a motion requesting a hearing, setting forth the reasons why relief must be considered prior to conclusion of the MMM. 2. No motion for stay relief with respect to the property subject of the MMM may be filed on an ex parte basis.



18. The referral of a matter to MMM does not relieve the parties from complying with any other court orders or applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, Administrative Orders or Local Rules. Notwithstanding a mortgage modification matter being referred to MMM, the case shall not be stayed or delayed without further order of the Court.

19. If the debtor's case is otherwise in a posture for administrative closing, the case shall remain open during the pendency of MMM, unless otherwise ordered by the Court.

20. In the event the parties reach a final resolution or, if no agreement has been reached, without application to the Court, attorneys for debtors shall be permitted to charge an attorney's fee not to exceed \$2,500.00, and \$100.00 in costs for MMM, subject to the compensation requirements for the chapter under which the case is filed. The \$2,500.00 fee shall include: (a) Filing of the MMM Motion; (b) Preparation of all forms required for mediation; (c) Filing of other required pleadings and preparation of proposed orders, and settlement papers, as applicable; (d) Communicating with the lender and the mediator, including communications through the portal; (e) Attendance at all MMM conferences and Court hearings; and (f) Review of all modified loan documents.

UNITED STATES BANKRUPTCY COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION  
[www.flmb.uscourts.gov](http://www.flmb.uscourts.gov)

In re:

MARK L. ENCK,

Chapter 13

Case No.: 6:12-bk-16486-CCJ

Debtor.  
\_\_\_\_\_ /

ORDER DENYING DEBTOR'S MOTION TO COMPEL  
COMPLIANCE WITH MORTGAGE MODIFICATION MEDIATION ORDER

This case came before the Court for hearing on April 16, 2014, on the debtor's Motion to Compel Compliance with Mortgage Modification Mediation Order (Doc. No. 43; the "Motion"). Wells Fargo Bank, N.A., filed a Response (Doc. No. 46; the "Response"). For the reasons set forth below, the Motion is denied.

By the Motion, the debtor alleges that he is attempting to save his primary residence by negotiating a mortgage modification with Wells Fargo, and he obtained an order from this Court directing the parties to mortgage mediation (Doc. No. 34; the "Mediation Order"). There are no allegations that Wells Fargo failed to attend meditation sessions or otherwise participate.

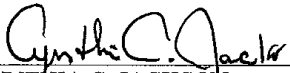
Instead, the debtor alleges that Wells Fargo declined to modify the mortgage after it evaluated a modification option that would have had an unfavorable net present value. According to the debtor, the evaluated modification option had an interest rate that was too low and a repayment period that was too short. The debtor argues that Wells Fargo did not negotiate in good faith by failing to evaluate modification options with higher interest rates or longer repayment periods.

By the Response, Wells Fargo alleges that it participated in the mediation, reviewed the debtor's mortgage and declined to offer a modification. Wells Fargo also took the step of reviewing the mortgage a second time as part of an internal appeal, which ultimately resulted in another denial of a modification. At all times Wells Fargo exercised its business judgment and determined that modification was not in its best interests.

The Mediation Order directs Wells Fargo to provide a representative to "attend and continuously participate in the entire mediation session", and to "engage in the mediation process in good faith".<sup>1</sup> Wells Fargo has complied with both of these directives. The debtor admits that Wells Fargo reviewed the debtor's mortgage, and considered at least one modification option, but that "it would not have been favorable to [Wells Fargo]".<sup>2</sup> Good faith does not require Wells Fargo to set aside its own business judgment and accept the debtor's determination that an alternative modification option "would result in a WIN/WIN".<sup>3</sup>

Upon consideration of the pleadings and the arguments of the parties, and for the reasons stated above, it is ORDERED that the Motion is denied.

Done and Ordered in Orlando, Florida, this 6<sup>th</sup> day of May, 2014.

  
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CYNTHIA C. JACKSON  
United States Bankruptcy Judge

Attorney Walter F. Benenati is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

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<sup>1</sup> (Doc. No. 34 ¶¶ 9, 18).

<sup>2</sup> (Doc. No. 43 ¶ 8).

<sup>3</sup> (*Id.* ¶ 10).