



MORTGAGE MODIFICATION MEDIATION PROGRAM PROCEDURES

Effective January 1, 2016, pursuant to Local Rule 3015.1

I. PURPOSE - These procedures and forms implement the Mortgage Modification Mediation (MMM) program pursuant to LR 3015.1. This program is designed to function as a forum for individual debtor to explore mortgage modification options with their lenders for real property in which the debtor 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 under the supervision of the United States Bankruptcy Court for the District of Nevada. Mortgage Modification Mediation options include modification of a mortgage or surrender of real property owned by an individual debtor.

II. DEFINITIONS

A. Required parties - the term “required parties” shall include, when applicable the debtor ; debtors’ attorney; lenders; lenders’ Nevada legal counsel; co-obligor; co-borrower; any third party, and the mediator. A required party may be excused from the MMM program upon approval of the bankruptcy court.

B. Lender - the term lender shall be deemed the current beneficiary and payee of the promissory note secured by the deed of trust, and/or its mortgage servicing agent.

C. Debtor – debtor includes both debtors in a joint petition.

III. DEBTORS ELIGIBLE TO PARTICIPATE

A. Individuals who have filed for bankruptcy protection and currently have a case pending under chapter 13 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 4 digits of the mortgage loan number in the MMM motion. The debtor shall set aside \$380.00 for the MMM Portal, MMM Document Preparation Software, and mediator fees.

B. A party seeking MMM shall serve on all required parties and the chapter 13 trustee a copy of the applicable motion for referral to MMM, and by a separate document, which shall not be filed with the court, providing as much of the following information as possible:

1. The common street address of the property to be modified;
2. The legal description of the property;
3. The name and address of the original lender;
4. The lenders complete loan number;
5. The name and address of the current assignee of the subject matter loan;
6. The address to which debtor send payments to; and
7. The name and address of lenders' legal counsel, if any.

C. Debtor who seeks to modify a mortgage must pay their bankruptcy filing fee in full prior to filing a motion to participate in MMM.

IV. MORTGAGE MODIFICATION MEDIATION PORTAL AND DOCUMENT PREPARATION SOFTWARE

A. 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"). The current Document Preparation Software vendor approved by the court is Default Mitigation Management LLC (DMM), whose software can be obtained at www.documods.com. In the event other vendors are approved by the court, those vendors will be listed on the court's website. 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 the 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.

B. Unless otherwise permitted by the court, all written communication between the parties regarding the mediation must be sent exclusively through the MMM Portal. The current MMM Portal provider approved by the court is managed and maintained by Default Mitigation Management LLC (DMM), which can be accessed at www.dclmwp.com. 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. 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.)

V. **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 of the petition

date.

A. BY 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 “Debtor’s Verified Ex Parte Motion for Referral to Mortgage Modification Mediation” (“Ex Parte Motion”) and attach as an exhibit the Local Form “Order on 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 trustee, lender, lender’s counsel, if applicable, and any other required parties, and upload the Ex Parte Order to the court’s CM/ECF. 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 moving party will promptly schedule a hearing.
- 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.
 - (b) If the lender fails to communicate with the debtor during the Mediator Selection Period, the debtor shall, within 7 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. 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. The clerk shall then randomly select a mediator from the clerk's Mediation Register, in accordance with section XII below 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." Any challenge to the clerk's designation of mediator shall be resolved in accordance with section XII (B)(3) below.

4. FILING A REQUEST OUT OF TIME ON NEGATIVE NOTICE

- (a) A debtor seeking to initiate MMM later than 90 days from the date of filing the Voluntary Petition must file the MMM Local Form "Debtor's Verified Out of Time Motion for Referral to Mortgage Modification Mediation" ("Out of Time Motion"), and attach as an exhibit the MMM Local Form Order on Debtor's Verified Out of Time Motion for Referral to Mortgage Modification Mediation ("Order"). The motion must state the reason the debtor did not initiate the MMM within the first 90 days. The debtor shall serve the Out of Time Motion and proposed order on the trustee, lender, lenders' counsel, if applicable, and any other required parties and upload the Order to the courts' CM/ECF. A Certificate of Service must also be filed pursuant to Local Rule 2002.
- (b) Prior to filing the Out of Time Motion:
 - (i) The non-refundable Document Preparation Software fee of \$40.00 shall have been paid directly to the approved vendor.
 - (ii) 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.
- (c) 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 to have consented to the entry of the Order.

Within 7 days after the expiration of the 14 day response deadline, the debtor 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.

- (d) If the lender or other party served with the Out of Time Motion files a timely response, the opposing party shall properly schedule and notice a hearing on the response.
- (e) 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 section V (A)(3) above.

B. BY A LENDER

1. A lender may request referral to MMM by filing and serving upon the debtor , and debtor’s counsel if applicable, a motion and notice of hearing requesting referral to MMM, together with a proposed order that substantially conforms to the MMM Local Forms.
2. The lender must file a Certificate or Service pursuant to Local Rule 2002. 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 lender shall set the matter for hearing on no less than 21 days’ notice.
3. 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 7 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.
4. If the parties fail to agree, within 7 days after expiration of the 14 day deadline, 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. The clerk shall then randomly select a mediator from the clerk’s Mediation Register pursuant to section XII below, 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.” Any challenge to the clerk’s designation of mediator shall be resolved in accordance with section XII (B)(3) below.

VI. ADDITIONAL PARTIES, CO-OBLIGORS/CO-BORROWERS, OR OTHER THIRD PARTIES - Any co-obligor, co-borrower or other third party obligated on the note or mortgage, 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 shall file, simultaneously with the debtor's Ex Parte Motion, the MMM Local Form "Third Party's Consent to Attend and Participate in Mortgage Modification Mediation."

VII. 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. The parties are required to comply with all deadlines set forth in the Order. Any deadlines imposed by the Order may be extended by order of the court or by stipulation of the parties. The parties are required to participate in MMM in good faith and may be subject to possible sanctions by the court for violation of this requirement including, vacating the order.

A. DEBTOR REQUIREMENTS

1. Within 7 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 the 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 \$40.00. As part of the debtor's submission to the MMM Portal, the debtor shall also upload a copy of the Order to the MMM Portal and identify the designated Mediator on the MMM Portal. The debtor shall also pay a non-refundable fee in the amount of \$300.00 directly to the mediator.
2. If the debtor fails to comply with any of the requirements in Section VII (A)(1), the court may consider vacating the Order upon motion by the lender and after notice and hearing.

B. LENDER REQUIREMENTS

1. Within 7 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 Nevada legal 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).
2. As part of the lender's initial registration on the MMM Portal, the 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 the same to the MMM Portal on behalf of the 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.

3. 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.
4. Within 7 days after delivery of the information provided for in section VII (A)(1) above, 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 Nevada 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 the case. The lender shall timely underwrite the loan modification request. The lender shall also pay a non-refundable fee in the amount of \$300.00 directly to the mediator.

C. MEDIATOR REQUIREMENTS

1. The designated mediator shall, within 7 days of designation, or within 7 days after the debtor has complied with requirements in section VII (A)(1) 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.
2. The mediator may contact the parties in whichever manner the parties and mediator agree to communicate.
3. The mediator shall schedule the initial MMM conference no later than 7 days after the mediator determines that the lender has received and reviewed all the required information through the MMM Portal. 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 1 hour. The mediator shall report the scheduling of any MMM conference on the MMM Portal.

VIII. MORTGAGE MODIFICATION MEDIATION CONFERENCE - All required parties must attend the MMM conference and be authorized to settle all matters requested in the motion.

A. 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 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.**

B. LENDER - The lender and lender's representative may participate in the MMM conference by telephone.

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

1. The initial MMM conference shall not exceed 1 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 1 hour.
2. The mediator may, upon written agreement of the parties, continue the MMM conference, if necessary, beyond the 2 one-hour MMM conferences.
3. MMM shall be concluded not later than 150 days from the date of the Order, unless extended by written consent filed on the MMM Portal, or, as provided in section VII, by court order or by stipulation of the parties.

E. CONFIDENTIAL COMMUNICATION

1. All communication and information exchanged during the MMM conference shall remain confidential and shall be inadmissible in any subsequent proceeding pursuant to Rule 408 of the Federal Rule of Evidence except in circumstances of a motion for failure to participate in good faith under these Rules and/or any subsequent mediation negotiation under this chapter and/or the State of Nevada Foreclosure Mediation Program.
2. The chapter 13 trustee shall have complete access to the MMM Portal, but shall not be able to read the content of any documentation, correspondence or other confidential information.

IX. EFFECT OF MEDIATION

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

1. All 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 and setting forth the reasons why relief must be considered prior to conclusion of the MMM.
 2. During the pendency of MMM, no motion for relief from stay may be filed on an ex parte basis with respect to the property subject of the MMM.
- 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. MORTGAGE PAYMENTS** – Any debtor participating in MMM shall be required to pay all post-petition installment payments to lender through the chapter 13 trustee including, but not limited to, on-going mortgage payments, trial modification payments, final modification payments, and any arrearages.
- D. CLOSING** - 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.

X. POST MEDIATION CONFERENCE PROCEDURES

- A.** In the event the parties reach a final resolution or are unable to reach an agreement, the mediator shall report the results of the MMM on the MMM Portal not later than 7 days after the conclusion of the final MMM conference. The mediator shall also complete the MMM Local Form “Final Report of Mortgage Modification Mediator” (“Final Report”) on the MMM Portal and filed the Final Report generated by the MMM Portal with the court, either electronically or by conventional filing, not later than 2 business days following entry of the “Final Report” data on the MMM Portal.
- B.** 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” and upload to the court’s CM/ECF program the proposed MMM Local Form “Order on 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.
- C.** 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”, and the debtor shall promptly schedule a hearing. The debtor shall serve the motion and notice of hearing on all required parties and file a certificate of service pursuant to Local Rule 2002. Debtor will submit the “Order on self-represented Debtor’s Motion to Approve Mortgage Modification Agreement” with the Clerk’s office.

XI. CHAPTER 13 PLAN PROCEDURES

A. MINIMUM PLAN PAYMENT – The debtor’s chapter 13 plan payment must be no less than 31% of the debtor’s gross income, less any amount paid towards HOA fees due for the property.

B. DISBURSEMENTS BY TRUSTEE

1. Payments tendered to the trustee will be disbursed to lender pursuant to the MMM agreement. Disbursements will commence as soon as practicable after the order granting debtor’s motion to approve the MMM agreement is entered by the court.
2. If MMM is initiated after confirmation of a plan that provides for the trustee to disburse payments to the lender, the trustee will hold on reserve such payments during the pendency of MMM. If MMM is successful, funds will be disbursed by the trustee as soon as practicable pursuant to the MMM agreement after confirmation of a modified plan.

C. PLAN MODIFICATION – After the MMM agreement is approved by the court, the debtor shall amend or modify the plan, as necessary, to accurately reflect the agreement. Such amendment or modification shall be filed and served no later than 30 days after the court entered its order approving the MMM agreement. In the event the required parties are unable to reach an agreement, the debtor must, within 14 days after the mediator filed the Final Report, amend or modify the plan to either (1) provide for the curing of any default and maintenance of payments on the secured claim subject to the MMM or (2) provide that said property will be surrendered.

D. CHAPTER 13 TRUSTEE GUIDELINES – Each chapter 13 standing trustee may issue guidelines for the administration of the MMM program. Unless otherwise ordered, the guidelines issued by the chapter 13 standing trustee appointed to the case must be observed. The standing trustees may revise the guidelines and shall reissue any revised guidelines with a notation of the effective date of the revision.

E. REQUIRED PLAN LANGUAGE – Any debtor participating in MMM shall include standard language in the “Other Provisions” section of the chapter 13 plan as set forth in the chapter 13 trustee’s MMM Guidelines.

XII. MEDIATOR PROCEDURES

A. REGISTRATION OF MEDIATORS

1. **MEDIATION REGISTER** - The clerk shall establish and maintain a register of qualified individuals who have registered to serve as mediators for the MMM and have been approved by the court. The clerk will maintain the Register of Mediators and will provide viewing access to each mediator's completed application. Applicants who meet the qualifications shall be so registered on the Register of Mediators. Mediators must also register directly on the MMM Portal so that the debtor may designate the Mediator and provide access to the debtor's submission on the MMM Portal as required under Section VII(A)(1). Mediators not on the court's Register of Mediators will not be approved for access to the MMM Portal.
2. **MINIMUM QUALIFICATIONS OF A MEDIATOR** - A mediator must complete and file the form "Verification of Qualification to Act as Mediator in the Mortgage Modification Mediation (MMM)" with the clerk of the United States Bankruptcy Court for the District of Nevada and must be:
 - (a) an active and licensed member of the Nevada Bar and have been admitted to practice in a state or federal court for at least the past 7 years;
 - (b) a retired Nevada state court judge or federal judge; or
 - (c) an active and licensed member of the Florida bar and an approved member on the Register of Mediators with the clerk of the United States Bankruptcy Court for the District of Florida, all divisions, accepting MMM Assignments(limited to 1 year commencing January 1, 2015).
3. **PROCEDURES FOR REGISTRATION** - Each mediator who desires to be included on the register must file the form "Verification of Qualification to Act as Mediator." The mediator may remain on the register for a period of time limited to 3 years from the date of the application. Thereafter, the mediator may reapply.
4. **REMOVAL FROM REGISTER** - The clerk shall remove a mediator from the Register of Mediators at the mediator's request. If removed at the mediator's request, the mediator may later request to be added to the register by submitting a new verification form. Upon receipt of such request, the clerk shall add the qualified mediator to the register. At the direction of the court, in the exercise of its discretion, the clerk shall remove a mediator from the Register of Mediators.
5. **MEDIATOR'S OATH** - Every mediator shall take the oath or affirmation prescribed by 28 U.S.C. §453, before serving as a mediator. The oath may be administered by any person authorized to administer oaths, and proof of the oath or affirmation shall be included on the Local Form "Verification of Qualification to Act as Mediator."
6. **STANDARDS OF PROFESSIONAL CONDUCT** - Any mediator appointed pursuant to these rules is subject to the Model Standards of Conduct for Mediators as revised and adopted in 2005 by the American Arbitration Association, American Bar Association, and Association of Conflict Resolution. Mediators shall have judicial immunity in the same manner and to the same extent as a judge.

- 7. COMPENSATION OF MEDIATORS** - Mediators shall be compensated at the rate set by the U.S. Bankruptcy Court for the District of Nevada, or at such rate as may be agreed to in writing by the parties and the mediator selected by the parties. Absent agreement of the parties to the contrary, the cost of the mediator's services shall be borne equally by the parties to the mediation conference.
- (a) The debtor shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within 7 days of designation of the mediator.
 - (b) The lender shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within 7 days of the designation of mediator.
 - (c) These fees include the mediator's assistance in determining that all documentation is uploaded to the MMM Portal, otherwise exchanged between the debtor and lender, scheduling of the mediation, and participation in a maximum of 2 one-hour MMM conferences.
 - (d) Fees for MMM conferences that extend beyond the initial 2 one-hour sessions shall be divided equally between the parties. 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 provide a money order or cashier's check to the mediator in an amount equal to the debtor's share of the one-hour session 24 hours in advance of the MMM conference. Any balance owed for a session that extends beyond the pre-paid session shall be paid as soon as possible, or within 2 business days following conclusion of the final session.

B. SELECTION OF MEDIATOR

- 1. MANNER OF REFERRAL** - The parties shall timely file the Local Form "Debtor's Notice of Selection of Modification Mediator," unless the parties fail to agree to the selection of the mediator. In this event, the clerk shall designate a mediator from the clerks' register on a random basis using the Local Form "Notice of Clerk's Designation of Mortgage Modification Mediator." As part of the debtor's submission to the MMM Portal, the debtor shall also upload a copy of the Order to the MMM Portal and identify the designated Mediator on the MMM Portal.
- 2. DISQUALIFICATION OF MEDIATOR FOR CAUSE-** Any person selected as a mediator may be disqualified for bias or prejudice as provided in 28 U.S.C. §144, and shall be disqualified in any action in which the mediator would be required to do so if the mediator were a judge governed by 28 U.S.C. §455.
- 3. REPLACEMENT OF MEDIATOR-** If any party to the MMM conference objects to the designated mediator, then within 3 business days from the date of the notice of designation the objecting party shall file with the clerk and serve upon the mediator and all other parties to the mediation a request for an alternate mediator. The clerk

shall designate a second mediator from the Register of Mediators on a random basis and shall serve a second notice of designation on all parties to the mediation conference and on the designated mediator. Each party shall be entitled to 1 challenge to any clerk-designated mediator. A mediator who is unable to serve shall, within 7 days from the date of the notice of designation, serve on the clerk and all parties to the mediation a written notice of inability to serve, and the clerk shall designate an alternate mediator in the manner described above. In the event that a Mediator is replaced, the debtor shall update the MMM Portal and designate the new Mediator on the MMM Portal.

C. MMM CONFERENCE

- 1. NOTICE AND PROCEDURES** - Upon consultation with the parties and their attorneys, the mediator shall fix a reasonable time and place for the mediation conference, except as otherwise agreed by the parties or by order of the court, and shall give the parties at least 7 days' advance written notice of the date, time and place of the MMM conference.
- 2. ATTENDANCE OF PARTIES MANDATORY** - An attorney who is responsible for each party's case shall attend the mediation conference. Each individual party and the representatives of each non-individual party shall appear with the full authority to negotiate the amount and issues in dispute without further consultation. The mediator shall determine when the parties are to be present in the conference room. The mediator shall permit telephonic appearances if all the parties agree, and such calls shall be initiated by the mediator. No party can be required to participate in an MMM conference for more than 2 hours.
- 3. PHYSICAL APPEARANCE OF REQUIRED PARTY NOT MANDATORY WITH A FLORIDA MEDIATOR** - If a Florida mediator is selected to conduct the mediation conference, a required party may appear telephonically. The Florida mediator shall initiate the conference call.
- 4. PUBLIC ENTITY AS PARTY** - If a party to mediation is any public entity, that party shall appear at the MMM conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision-making body of the entity.
- 5. FINAL REPORT OF MORTGAGE MODIFICATION MEDIATOR-** The mediator shall timely complete and file the "Final Report of Mortgage Modification Mediator" form. The form shall disclose the results of the mediation.

- D. FINAL REPORT** - Within 7 days after the MMM conference, the mediator shall file with the court a report showing compliance or non-compliance by the parties with the mediation order and the results of the mediation, using the MMM Local Form "Final Report of Mortgage Modification Mediator." In the event there is an impasse, the mediator shall report that there is a lack of agreement and shall make no further comment or recommendation. If the parties have reached an agreement regarding the disposition of the

matter or proceeding, the parties shall, within 14 days of the filing of the mediators report, prepare and submit to the court the appropriate Motion to Approve Mortgage Modification Agreement for its approval. Failure to file such a motion shall be a basis for the court to impose appropriate sanctions.

E. CONFIDENTIALITY - Conduct and statements made in the course of mediation proceedings constitute “conduct or statements made in compromise negotiations” within the meaning of Rule 408 of the Federal Rules of Evidence, and no evidence inadmissible under Rule 408 shall be admitted or otherwise disclosed to the court.

F. COMPLIANCE WITH BANKRUPTCY CODE AND RULES - Nothing in these procedures shall relieve the debtor, lender, or any other party in interest, from complying with any other orders of the court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any local rules or administrative rules.

XIII. COMPENSATION OF DEBTOR’S COUNSEL

A. Attorneys for debtors shall be permitted to charge attorney’s fee not to exceed \$2,500.00, and \$100.00 in costs for each MMM. The \$2,500.00 fee shall include:

1. Filing of the Motion and proposed order;
2. Preparation of all forms required for MMM;
3. Filing of other required pleadings and preparation of proposed orders, and filing the Motion and Order to Approve Mortgage Modification Agreement;
4. Communicating with the lender and the mediator, including communications through the MMM portal;
5. Attendance at all MMM conferences and related court hearings; and
6. Review of all modified loan documents.

B. Attorney for the debtor shall file an ex parte application and order with the court to be paid these fees and costs through the chapter 13 trustee upon completion of the requirements set forth in (1) and (2) below:

1. The sum of \$1,500.00 shall be presumed to compensate debtor’s attorney for initial services relating to MMM, including but not limited to collecting and uploading documents to the MMM Portal, drafting and filing the motion, and communicating with the lender and mediator.
2. The remaining balance of \$1,000.00 shall become payable once the mediator has scheduled the initial MMM conference.

XIV. FILING OF DOCUMENTS IN ERROR

Documents that are filed in error in the courts electronic filing system cannot be deleted from that system. Redactions of incorrectly filed documents can be processed in accordance with Local Rule 9037.

