Mortgage Modification Mediation (MMM) Program Procedures
United States Bankruptcy Court, District of Nevada
Effective 5/1/17

I. Purpose – These procedures and forms implement the Mortgage Modification Mediation (MMM) Program pursuant to Local Rule 3015.1. The MMM 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 debtor has an interest or is obligated on the promissory note or mortgage. The goal of the MMM Program 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.

II. Definitions – The following definitions are applicable to the MMM procedures.

A. Debtor – Debtor includes an individual debtor, or both debtors in a joint petition.

B. Lender – Lender is the current beneficiary and payee of the promissory note secured by the deed of trust, and/or its mortgage servicing agent.

C. Required Parties – Required Parties include, when applicable, Debtor, Debtor's attorney, Lender, Lender's Nevada legal counsel, any co-obligor, co-borrower or third-party obligor, and the Mediator (also referred to as "parties" in these procedures).

D. Debtor's Prepared Package – Debtor's initial loan modification forms completed using the court-approved Document Preparation Software, and the supporting documentation required for submission to Lender for review through the MMM Portal.

E. Completed Package – Debtor's Prepared Package along with any additional documents or information specified by Lender on the MMM Portal.

III. General Duties of Parties

A. Conduit Payment Requirement – A Debtor participating in the MMM Program is required to pay all post-petition installment payments to Lender through the Chapter 13 Trustee as conduit payments including, but not limited to, ongoing mortgage payments, trial loan modification payments, final loan modification payments, adequate protection payments, arrearages, and post-petition fees and costs (if any).

B. Duration of MMM Program – The entire MMM Program proceedings in a case must be completed no later than one hundred and fifty (150) days after entry of the Order referring the case to the MMM Program, unless agreed to by the parties on the MMM Portal or extended by an order of the Court. If the parties reach a trial loan modification agreement through the MMM Program, this deadline will be extended for Debtor's completion of trial period payments and the execution of a final loan modification.

C. Good Faith – All Required Parties, their attorneys, and the Mediator must act in good faith throughout the entirety of the MMM Program. If any party fails to comply timely and in full with the deadlines and requirements of the MMM Program, then upon motion filed by a party or the Chapter 13 Trustee the Court may impose appropriate sanctions after notice and a hearing.

D. Compliance with Bankruptcy Code and Rules – Nothing in these procedures relieves Debtor, Lender, Required Parties, the Mediator, or any other party in interest from complying with orders of the Court, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, or any local rules or administrative rules.

E. Noticing and Service of Ex Parte Motions – Motions and applications designated in these Procedures as "ex parte" are not required to be served pursuant to Local Rule 2002(a) and are not required to be set for hearing under Local Rule 9014.

IV. MMM Portal, Document Preparation Software, and MMM Forms – The Court has mandated the use of a secure online portal (the "MMM Portal"), an online program that facilitates the preparation of the Debtor's loan modification package (the "Document Preparation Software"), and Local MMM Forms in an effort to expedite the exchange of information between Debtor and Lender.

A. Approved Portal Vendor – The MMM Portal vendor approved by the Court is managed and maintained by Default Mitigation Management, LLC (DMM).
   1. The MMM Portal can be accessed at www.dclmwp.com.
   2. The court-approved Document Preparation Software can be accessed through the MMM Portal or at www.documods.com.

B. Purpose – Submitting documents to the MMM Portal provides transparency in the mortgage modification process by making information immediately available to all parties through a secure internet website. The use of the Document Preparation Software further ensures that Debtor's initial submission to Lender is complete and accurate, and should expedite the Lender's review.
   1. The use of the MMM Portal and the Document Preparation Software is intended to eliminate the need for multiple submissions of documents that were not received and unnecessary delay based upon incomplete documentation.
   2. The Court's website on the MMM Program includes MMM Portal training materials on mortgage modification, including contact information for the MMM Portal vendor and information on the Document Preparation Software.
   3. Free training on the use of the MMM Portal will be available to all Lenders and attorneys.

C. Required Use of MMM Portal – Unless otherwise permitted by the Court or agreed by the parties and the Mediator, all communication between the parties must be sent exclusively through the MMM Portal.

D. Exceptions to MMM Portal Requirement – Any litigated matters incidental to the mediation will be considered separate from MMM and not subject to the MMM Portal communication requirement. (For example, a motion to compel mediation or motions related to discovery must be filed in the main bankruptcy case and not through the MMM Portal.)

E. Required Use of MMM Forms – Unless otherwise permitted by the Court, the MMM Forms prescribed by these procedures must be used without alteration. The Forms may not be modified to affect the wording, substance, or the order of information presented in the Forms.

V. Debtors Eligible to Participate

A. To be eligible to participate in the MMM Program, Debtor must:
   1. Be an individual;
   2. Have a case currently pending under Title 11, Chapter 13, of the United States Code in the District of Nevada;
   3. Use the form Chapter 13 Plan prescribed by the Chapter 13 Trustee pursuant to Local Rule 3015;
   4. Have the ability to immediately pay the applicable Document Preparation Software fee ($40.00), the applicable MMM Portal submission fee ($40.00), and $300.00 (one half of the $600.00 Mediator's fee) to the Mediator; and
   5. Have sufficient monthly disposable income to make a Chapter 13 Plan payment of at least thirty one percent (31%) of Debtor's gross monthly income or such other amount sufficient to pursue mortgage modification for the real property subject to the MMM Program.

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

VI. Request for Referral to MMM – Debtor or Lender may seek referral to the MMM Program.

A. By Debtor

   1. Complete Debtor's Prepared Package – An eligible Debtor seeking referral to the MMM Program must first complete the Debtor's Prepared Package using the Document Preparation Software and pay the $40.00 non-refundable fee directly to the approved vendor.

   2. Verify Eligibility of Mediator – Prior to filing a Motion for referral to the MMM Program, Debtor must communicate with a proposed Mediator listed on the Register of Mediators on the Court's website in order to verify that the Mediator is free from conflicts and eligible to serve in the case.

3. Filing the Motion for Referral – After completing Debtor's Prepared Package and identifying a Mediator, an eligible Debtor may seek referral to the MMM Program by completing and filing an Ex Parte Motion for Referral to Mortgage Modification Mediation Program (NVB 105-2) with the Court.

    a. The Motion for referral to the MMM Program must be filed within ninety (90) days of the petition date. A Motion for referral filed later than ninety (90) days after the petition date, or after confirmation of a Chapter 13 Plan, must include a statement explaining why the MMM process was not commenced sooner.

    b. The Motion must identify a Mediator eligible for assignment pursuant to Sections VII and XV(C) of these procedures.

    c. Debtor may seek Lender's consent for referral to the MMM Program prior to filing the Motion.
        i. If Lender provided Debtor with written consent to entry of an Order referring the case to the MMM Program, Debtor must include the Lender's Consent to Attend and Participate in Mortgage Modification Mediation Program (NVB 105-5) with the Motion for referral to the MMM Program.
        ii. If Lender did not provide Debtor with written consent to entry of an Order referring the case to the MMM Program, Debtor must satisfy the additional notice and service requirements set forth in Section VI(A)(6)(b) below.

4. Entry of Order of Referral – Concurrently with the filing of the Motion for referral to the MMM Program, Debtor must lodge with the Court an Order Granting Ex Parte Motion for Referral to Mortgage Modification Mediation Program (NVB 105-3). The Court may enter the Order referring the case to the MMM Program on an *ex parte* basis.

5. Deadline for Motion to Reconsider – The Order Granting Ex Parte Motion for Referral to Mortgage Modification Mediation Program (NVB 105-3) must establish a fourteen (14) day deadline for Lender to seek reconsideration of the Order. If a timely Motion for Reconsideration is filed with the Court:
    a. The moving party must promptly schedule a hearing; and
    b. All deadlines set forth in the Order of referral will be suspended pending resolution of the Motion.

6. Notice and Service Requirements

    a. Upon entry of the Order referring the case to the MMM Program, the moving party must:
        i. Serve a copy of the Order on all Required Parties, including the assigned Mediator and the Chapter 13 Trustee; and

ii. File a Certificate of Service with the Court evidencing these parties were properly served with the Order.

b. If Lender did not provide Debtor with written consent to entry of an Order referring the case to the MMM Program, immediately after entry of the Order Debtor must:
   i. Serve a copy of the Order on all Required Parties, including the assigned Mediator and the Chapter 13 Trustee;
   ii. Include a copy of these MMM procedures as **Exhibit A**;
   iii. Include a copy of the Objection to Selection of Mortgage Modification Mediation Program Mediator (NVB 105-4) as **Exhibit B**; and
   iv. File a Certificate of Service with the Court evidencing these parties were properly served with the Order.

B. By Lender – If Lender desires to commence MMM proceedings in a case, it must follow the same steps required of Debtor under Sections VI(A)(2)-(5) of these procedures and use the same applicable forms.

VII. Process for Selection of Mediator – Upon entry of the Order of referral to the MMM Program, the Mediator proposed in the Motion for referral will be assigned to the case if no party objects.

A. Objection to Proposed Mediator – If a party objects to the proposed Mediator, such objection must be made through the MMM Portal. The parties must communicate and attempt to agree on a successor Mediator within fourteen (14) days after identification of the assigned Mediator on the MMM Portal.

B. Parties Agree on Successor Mediator – If the parties agree on a successor Mediator, the objecting party must file with the Court a Stipulation Assigning Successor Mediator (NVB 105-16) and concurrently lodge with the Court an Order Approving Stipulation Assigning Successor Mediator (NVB 105-17). Once the Order is entered, Debtor must promptly update the MMM Portal to identify the successor Mediator of the case.

C. Parties Do Not Agree on Successor Mediator – In the event the parties cannot agree on a successor Mediator, within fourteen (14) days after identification of the assigned Mediator on the MMM Portal the objecting party must file with the Court an Objection to Selection of Mortgage Modification Mediation Program Mediator (NVB 105-4) and set the matter for hearing pursuant to Local Rule 9014. After notice and a hearing, the Court will assign a Mediator. Once a Mediator is assigned, Debtor must promptly update the MMM Portal to identify the Mediator of the case.

D. Failure to Timely Object – If the objecting party fails to file with the Court an Objection to Selection of Mortgage Modification Mediation Program Mediator (NVB 105-4) and notice it for hearing within fourteen (14) days after identification of the assigned Mediator on the MMM Portal, the Mediator identified in the Order will remain assigned to the case.

VIII. <u>Additional Parties</u> – Any co-obligor, co-borrower, or other third party obligated on the note or mortgage ("Additional Party") may participate in the MMM Program.

A. If the participation of an Additional Party is necessary, Debtor must file with the Motion for referral a Third-Party Consent to Attend and Participate in Mortgage Modification Mediation Program (NVB 105-6) for each co-obligor, co-borrower, or other third party participating in the MMM Program.

B. Debtor or Lender may request by appropriate motion a determination from the Court whether the MMM Program can proceed in a case without the involvement of the Additional Party. Such Motion should be set for hearing pursuant to Local Rule 9014.

IX. <u>Requirements Upon Entry of Order of Referral to MMM Program</u> – The parties and Mediator are required to comply with all deadlines set forth in the Order of referral. Any deadlines imposed by the Order may be extended by further Order of the Court or by written agreement of the parties and Mediator on the MMM Portal.

A. <u>Debtor Requirements Following Entry of Order of Referral to MMM Program</u>

1. Within seven (7) days after entry of the Order referring the case to the MMM Program or Lender's registration on the MMM Portal, whichever is later, Debtor must:
   a. Pay the non-refundable MMM Portal submission fee of $40.00 directly to the MMM Portal vendor; and
   b. Upload to the MMM Portal:
      i. A copy of the Order referring the case to the MMM Program; and
      ii. Debtor's Prepared Package; and
      iii. Identify the assigned Mediator on the MMM Portal.

2. Within seven (7) days after receiving instructions from the Mediator pursuant to Section IX(C)(1)(b) of these procedures regarding payment of the Mediator's fee, Debtor must pay $300.00 (one-half of the applicable $600.00 Mediator's fee) directly to the assigned Mediator.

3. Within fourteen (14) days after Lender provides the MMM Portal vendor with its list of required mortgage modification documents and information pursuant to Section IX(B)(1)(a) of these procedures, Debtor must provide Debtor's Completed Package to Lender through the MMM Portal.

4. If, pursuant to Section IX(B)(5) of these procedures, Lender requests additional documents or information from Debtor, Debtor must provide such documents or information to Lender on the MMM Portal within fourteen (14) days after receiving such request.

B. <u>Lender Requirements Following Entry of Order of Referral to MMM Program</u>

1. Within seven (7) days after entry of the Order referring the case to the MMM Program, Lender and Lender's Nevada counsel (if any) must register on the MMM Portal (if not already registered).
    a. As part of the registration process for the MMM Portal, Lender must provide to the MMM Portal vendor all applicable initial mortgage modification requirements, including any additional documents and information necessary to perfect Debtor's Completed Package.
    b. A list of Lender's mortgage modification requirements and any additional documents necessary to perfect Debtor's Completed Package will be posted on the MMM Portal by the MMM Portal vendor.

2. Within seven (7) days after receiving instructions from the Mediator pursuant to Section IX(C)(1)(b) of these procedures regarding payment of the Mediator's fee, Lender must pay $300.00 (one-half of the applicable $600.00 Mediator fee) directly to the Mediator.

3. Within seven (7) days after Debtor submits the Completed Package on the MMM Portal, Lender must on the MMM Portal:
    a. Acknowledge receipt of the Completed Package; and
    b. Designate its single point of contact and Nevada legal counsel (if any).

4. Lender's designated single point of contact and Nevada legal counsel must have all requisite authority (within the investor's guidelines) to settle any and all issues that may arise during the MMM conferences, and must attend and continuously participate in all MMM conferences in the case.

5. After receiving Debtor's Completed Package pursuant to Section IX(A)(3) of these procedures, Lender will have twenty-one (21) days to determine whether any additional documents or information is required to complete Lender's review of Debtor's mortgage modification options.
    a. Any request for additional documents or information must be made by Lender through the MMM Portal within the twenty-one (21) day period set forth above.
    b. If no request for additional documents or information is made by Lender within twenty-one (21) days, Debtor's Completed Package will be deemed perfected.

6. Lender must timely review and underwrite the loan modification request, and indicate on the MMM Portal that it has completed a review of Debtor's Completed Package. Lender must indicate its final decision on the MMM Portal.

7. If at any time Lender transfers a loan subject to the MMM Program, Lender or Debtor must promptly update the MMM Portal to identify the new holder of the loan (the "Successor Lender"). The Successor Lender must:

a. Be obligated to comply with all terms of the Order, as well as the requirements of Local Rule 3001(b);
b. Within seven (7) days of the transfer, acknowledge that it is the new holder of the loan on the MMM Portal; and
c. Within twenty-one (21) days of the transfer, communicate to Debtor and the Mediator on the MMM Portal whether any additional documents or information are necessary to perfect Debtor's Completed Package pursuant to Section IX(B)(1)(a) of these procedures.

C. Mediator Requirements Following Entry of Order of Referral to MMM Program

1. Within seven (7) days after Debtor identifies the assigned Mediator on the MMM Portal, the Mediator must:
   a. Log into the MMM Portal and confirm their assignment as the Mediator in the case; and
   b. Provide the parties with contact information and instructions regarding payment of the Mediator fee.

2. The Mediator must schedule the initial MMM conference to take place within ninety (90) days after entry of the Order referring the case to the MMM Program. The initial MMM conference may be scheduled as soon as the Mediator determines that Lender has completed its review of Debtor's Completed Package as required by Section IX(B)(5) of these procedures.
   a. The Mediator may communicate with the parties in whichever manner the parties and Mediator agree.
   b. After consultation with the parties, the Mediator must fix a reasonable time and place for the MMM conferences.
   c. The Mediator must give the parties at least 7 days' notice on the MMM Portal of the date, time, and place for the MMM conferences.
   d. The Mediator must report the scheduling of any and all MMM conferences through the MMM Portal.

X. Attendance at Mortgage Modification Mediation Conferences

A. Mandatory Attendance at MMM Conferences – Except as otherwise provided in this section, the Required Parties must attend all MMM conferences and be authorized to settle all matters requested in the Motion seeking referral to the MMM Program.

B. Debtor

1. A Debtor represented by an attorney may participate in the MMM conference by telephone provided that they are physically present with Debtor's attorney and provide identification to the attorney during all MMM conferences.

2. A Debtor not represented by an attorney must be physically present at the location designated by the Mediator and provide identification to the Mediator during all MMM conferences.

3. If Debtor requires the assistance of a foreign language interpreter, Debtor must provide an interpreter at Debtor's own expense.

C. Lender – Lender's designated representative and Lender's attorney (if any) may appear telephonically at all MMM conferences.

D. Additional Parties – Any Additional Party represented by an attorney may participate in the MMM conference by telephone provided that they are physically present with the attorney and provide identification to the attorney during all MMM conferences. An Additional Party not represented by an attorney must be physically present at the location designated by the Mediator and provide identification to the Mediator during all MMM conferences.

E. Public Entities – If a party to the mediation is a public entity, the entity must appear at the MMM conference through 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. The representative may appear telephonically at all MMM conferences.

XI. MMM Conference Procedures

A. Initial and Final MMM Conferences – The initial MMM conference must not exceed one (1) hour in duration unless otherwise agreed by the parties and the Mediator. In the event the parties are unable to reach an agreement, the Mediator must schedule a second and final MMM conference to be held within thirty (30) days after the conclusion of the initial MMM conference. The final MMM conference also must not exceed one (1) hour in duration unless otherwise agreed by the parties and the Mediator. If necessary, with consent of the parties, the Mediator may continue the MMM conference beyond the two (2) one-hour conferences. No party can be required to participate in MMM conferences for more than a total of 2 hours, unless otherwise ordered by the Court.

B. Mandatory Attendance of Parties – The Mediator may conduct MMM conferences in a manner which, in the Mediator's discretion, best facilitates open communication, exchange of information, and the finalization of a feasible and beneficial agreement between the parties. For example, the Mediator may determine when the parties are to be present in the conference room, or the Mediator may permit telephonic appearances if all the parties agree, with such calls initiated by the Mediator.

C. Content of MMM Conferences – The MMM conferences should be used to explore mortgage modification options between the parties, and to discuss and resolve issues related to claims secured by the real property subject to the MMM Program. Such issues should include, but are not limited to, whether a final loan modification

agreement recapitalizes pre-petition and/or post-petition arrears, and whether Lender intends to assert any post-petition fees, expenses, or charges pursuant to Federal Rule of Bankruptcy Procedure 3002.1(c).

D. Authority and Ability to Finalize Agreement – Each party and their representatives must appear with the full authority to negotiate the amount and issues in dispute without further consultation. All parties attending the MMM conferences must be ready, willing, and able to sign a binding settlement agreement. At all MMM conferences the parties must have the ability to scan, send and receive documents by email, facsimile, or other electronic means, as necessary to enter into a binding settlement agreement.

E. Confidential Communications

1. All communications and information exchanged during the MMM Program are privileged, confidential, and inadmissible in any subsequent proceeding as provided for by Rule 408 of the Federal Rules of Evidence.

2. The Chapter 13 Trustee will have complete access to the MMM Portal, but must not be able to view the contents of any documentation or other confidential information exchanged by the parties.

XII. Procedures Following MMM Conferences

A. Trial Loan Modification Agreement – If the parties reach a trial loan modification agreement:

1. Within seven (7) days after the parties reach such an agreement the Mediator must upload to the MMM Portal and file with the Court an Interim Report of Mortgage Modification Mediation Program Mediator (NVB 105-7).

2. Within seven (7) days after the Mediator uploads the Interim Report with the Court:
   a. Debtor must file an Ex Parte Motion to Approve Trial Loan Modification Agreement (NVB 105-9).
   b. Debtor must lodge with the Court an Order Approving Trial Loan Modification Agreement (NVB 105-10). The Court may grant such relief on an *ex parte* basis.
   c. Once entered by the Court, Debtor must serve a copy of the Order on all Required Parties and the Chapter 13 Trustee, and file a certificate of service evidencing these parties were properly served.

3. The Mediator and all Required Parties must monitor the trial loan modification and manage the mediation until a final loan modification has been executed or Lender has denied a final loan modification. Access to the MMM Portal must remain open during the pendency of a trial loan modification.

B. Final Loan Modification Agreement – If the parties reach a final loan modification agreement:

1. Within seven (7) days after the parties reach such an agreement the Mediator must upload to the MMM Portal and file with the Court a Final Report of Mortgage Modification Mediation Program Mediator (NVB 105-8).

2. Within fourteen (14) days after the Mediator uploads the Final Report with the Court:
   a. Debtor must file a Motion to Approve Final Loan Modification Agreement (NVB 105-11).
      i. If Debtor is represented by an attorney, this Motion may be filed *ex parte*. Debtor must concurrently lodge with the Court an Order Approving Final Loan Modification Agreement (NVB 105-13), which the Court may grant on an *ex parte* basis.
      ii. If Debtor is not represented by an attorney, this Motion must be noticed, served, and set for a hearing pursuant to Local Rule 9014 using a Notice of Hearing on Pro Se Debtor's Motion to Approve Final Loan Modification Agreement (NVB 105-12).
   b. Once an Order Approving Final Loan Modification Agreement (NVB 105-13) is entered by the Court, either *ex parte* or after notice and hearing, Debtor must serve a copy of the Order on all Required Parties and the Chapter 13 Trustee, and file a certificate of service demonstrating these parties were appropriately served.

3. Within twenty-eight (28) days after a final loan modification is approved by the Court, Debtor must file, serve, and notice for confirmation an Amended Chapter 13 Plan or Modified Chapter 13 Plan providing for conduit loan modification payments pursuant to Section III(A) of these procedures, if the Chapter 13 Plan does not already contain such provisions.

C. No Agreement – If the parties fail to reach an agreement:

1. Within seven (7) days after the conclusion of the MMM conferences the Mediator must upload to the MMM Portal and file with the Court a Final Report of Mortgage Modification Mediation Program Mediator (NVB 105-8).

2. Within twenty-eight (28) days after the Mediator files the Final Report with the Court, Debtor must file, serve, and notice for confirmation an Amended Chapter 13 Plan or Modified Chapter 13 Plan providing for appropriate treatment of Lender's claim (i.e. curing pre-petition and post-petition arrears while maintaining conduit payments, or surrendering the property).

XIII. Chapter 13 Procedures

A. Referral to MMM Prior to Confirmation – If Debtor seeks referral to the MMM Program prior to confirmation, Debtor must file an initial Chapter 13 Plan or an Amended Chapter 13 Plan in conjunction with the Motion for Referral to Mortgage Modification Program (NVB 105-2). The Chapter 13 Plan must:
   1. Provide for a plan payment of no less than 31% of Debtor's gross income;
   2. Identify the Lender participating in the MMM Program in Section 2.12.1 of the Chapter 13 Plan and omit any specific payment amount to the Lender;
   3. Indicate in Part VI – "Additional Provisions" of the Chapter 13 Plan that Debtor intends to participate in the MMM Program; and
   4. Propose treatment of other creditor claims consistent with the Bankruptcy Code.

B. Referral to MMM After Confirmation – If Debtor seeks referral to the MMM Program after confirmation, Debtor must file a Modified Chapter 13 Plan in conjunction with the Motion for Referral to Mortgage Modification Program (NVB 105-2). The Modified Chapter 13 Plan must:
   1. Provide for a plan payment of no less than 31% of Debtor's gross income;
   2. Identify the Lender participating in the MMM Program in Section 2.12.1 of the Chapter 13 Plan and omit any specific payment amount to the Lender;
   3. Indicate in Part VI – "Additional Provisions" of the Chapter 13 Plan that:
      a. Debtor intends to participate in the MMM Program;
      b. Trustee will reserve all disbursements, including arrearage payments, to the participating Lender and to any creditors secured by the same real property during the pendency of the MMM Program, unless the Modified Plan or separate Court order provides otherwise; and
      c. Trustee will continue to make all other disbursements pursuant to other orders of the Court, including the previously confirmed plan.

C. Trial Loan Modification – If mediation resulted in a trial loan modification, Trustee will commence and maintain trial loan modification payments to Lender pursuant to the trial loan modification agreement until:
   1. Further Order of the Court; or
   2. A permanent loan modification is finalized, in which case Trustee will commence and maintain payments according to the final loan modification; or
   3. A final loan modification is denied by Lender.

D. Chapter 13 Plan – Debtor must file a Plan pursuant to Sections XIII(A)-(B) above, as applicable. If Debtor fails to timely file an Amended Chapter 13 Plan or Modified Chapter 13 Plan in accordance with these procedures, the Lender and/or Chapter 13 Trustee may seek appropriate relief from the Court.

E. Disbursements by Trustee
   1. Unless otherwise ordered by the Court, the Chapter 13 Trustee will retain the monthly plan payments made pursuant to Sections XIII(A) and (B) of these procedures until:
      a. An Order Approving Attorney's Fees for representation of the Debtor in the MMM Program is entered by the Court; or

b. Debtor has filed with the Court a Chapter 13 Plan, Amended Chapter 13 Plan, or Modified Chapter 13 Plan proposing payments to Lender as set forth in the loan modification agreement; and
   i. The Court has entered an Order Approving Trial Loan Modification Agreement (NVB 105-10); or
   ii. Debtor has filed a Motion to Approve Final Loan Modification Agreement (NVB 105-11).

2. Monthly plan payments received timely by the Trustee pursuant to these procedures will be deemed payments made timely pursuant to any trial loan modification agreement or final loan modification agreement under the MMM Program.

3. Entry of an Order confirming the Chapter 13 Plan after the conclusion of the MMM Program will suspend and revoke any remaining obligations of Trustee to make disbursements pursuant to an Order Approving Trial Loan Modification Agreement (NVB 105-10) or Order Approving Final Loan Modification Agreement (NVB 105-13).

F. Plan Confirmation – The Court will not confirm a proposed Chapter 13 Plan, Amended Chapter 13 Plan, or Modified Chapter 13 Plan for which the Debtor has been referred to the MMM Program until after:
   1. The Court has entered an Order Approving Final Loan Modification Agreement (NVB 105-13); and
   2. The proposed Chapter 13 Plan, Amended Chapter 13 Plan, or Modified Chapter 13 Plan accurately reflects the terms of the final loan modification agreement or otherwise satisfies the requirements 11 U.S.C. § 1325(a)(5) with respect to Lender's claim.

G. Chapter 13 Trustee MMM Program Guidelines – Each Chapter 13 Standing Trustee may issue guidelines for the administration of cases involved in the MMM Program. Unless otherwise ordered, the guidelines issued by the Chapter 13 Trustee appointed to the case must be observed. The Chapter 13 Trustees may revise the guidelines and reissue any revised guidelines with a notation of the effective date of the revision.

XIV. Effect of Mediation

A. Automatic Stay

1. Upon entry of the Order referring the case to the MMM Program, the automatic stay as provided for under 11 U.S.C. § 362(a) is modified to the extent necessary to facilitate the MMM Program, unless otherwise ordered by the Court.

2. After entry of the Order referring the case to the MMM Program, unless the Court orders otherwise, all pending motions for relief from the automatic stay with respect to real property subject to the MMM Program will be continued until after such

time that the MMM Program is completed. Unless otherwise ordered by the Court, the pendency of the MMM Program will constitute good cause and compelling circumstances under 11 U.S.C. § 362(e) to delay the entry of any final decision on a pending motion for relief from stay with respect to real property subject to the MMM Program.

3. During the pendency of the MMM Program, no motion for relief from stay may be filed on an *ex parte* basis with respect to real property subject to the MMM Program. Any party seeking relief from the automatic stay prior to the conclusion of the MMM Program must, in a motion filed, served, and noticed for hearing pursuant to Local Rule 9014, set forth the reasons why relief is appropriate prior to the conclusion of the MMM Program.

B. No Delay – Referral of a case to the MMM Program does not relieve the parties from complying with any other Court orders or applicable provisions of the United States Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, General Orders or the Bankruptcy Local Rules. Notwithstanding a matter being referred to the MMM Program, proceedings in the bankruptcy case must not be stayed or delayed without further order of the Court.

C. Closing – If Debtor's bankruptcy case is otherwise in a posture for administrative closing, the case will remain open during the pendency of the MMM Program, unless otherwise ordered by the Court.

XV. Mediator Procedures, Compensation, and Responsibilities

A. Court Approval of Mediators – The Court will approve a minimum number of ten (10) Mediators to be available for participation in the MMM Program for each calendar year. The minimum number of Mediators may be modified by the Court in the exercise of its discretion. Mediator approval will be based upon the application and qualifications set forth in Section XV(B) of these procedures. Selected Mediators will be listed in the Court's Register of Mediators pursuant to Section XV(B) of these procedures.

B. Registration of Mediators – The Clerk of the Court will establish and maintain a register of qualified individuals who have been approved by the Court to serve as Mediators for the MMM Program (the "Register of Mediators"). Mediators approved by the Court will be listed on the Register of Mediators for a duration of one (1) year commencing January 1st of each year. Mediators must reapply each year. Following approval from the Court, Mediators must register directly on the MMM Portal so that Debtor may designate the Mediator and provide access to Debtor's submissions on the MMM Portal. Any Mediator not listed on the Register of Mediators will not be approved for access to the MMM Portal. The Clerk will provide viewing access to each approved Mediator's completed application.

1. Minimum Qualifications – In order to be eligible for consideration as a Mediator in the MMM Program, a mediator must be:
   a. A registered user on PACER and CM/ECF; and
   b. Either:
      i. An active and licensed member of the State Bar of Nevada and admitted to practice law in a state court or federal court within Nevada for at least the past **five (5)** years; or
      ii. A retired Nevada state court or federal court judge; or
      iii. A Mediator previously approved under MMM Procedures promulgated by the Court for the U.S. Bankruptcy Court, District of Nevada.

2. Mediator Application – Eligible applicants must complete the Verification of Qualification to Act as Mediator in the Mortgage Modification Mediation Program (NVB 105-1) and file such Verification with the Clerk of the Court for the U.S. Bankruptcy Court, District of Nevada no later than December 1st of each calendar year.

3. Mediator's Oath – Every eligible applicant must take the oath or affirmation prescribed by 28 U.S.C. § 453, before serving as a Mediator in the MMM Program. The oath may be administered by any person authorized to administer oaths, and proof of the oath or affirmation must be included with the Verification of Qualification to Act as Mediator in the Mortgage Modification Mediation Program (NVB 105-1).

4. Standards of Professional Conduct – Any Mediator appointed pursuant to these procedures will be 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.[1]

5. Removal from Register of Mediators

   a. The Clerk must remove a Mediator from the Register of Mediators if the Court, in the exercise of its discretion, directs the Clerk to do so.
   b. Any Mediator may voluntarily request to be removed from the Register of Mediators by completing and providing the Clerk of the Court with a Request for Removal from Register of Mediators (NVB 105-14). The Clerk of the Court will promptly remove a Mediator from the Register of Mediators at the Mediator's request. Any Mediator voluntarily removed from the Register of Mediators may later reapply by filing a new Verification of Qualification to Act as Mediator in the Mortgage Modification Mediation Program (NVB 105-1).
   c. A Mediator removed from the Register of Mediators must not accept any new cases and must immediately contact the MMM Portal vendor to discontinue

[1] Available online at: http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf).

their access to the MMM Portal. Unless otherwise ordered by the Court, a removed Mediator may complete any mediations to which they are assigned.

C. Selection of Mediator – After verifying the Mediator is eligible to serve, the party moving for referral to the MMM Program must identify the proposed Mediator in the Motion for Referral to Mortgage Modification Mediation Program (NVB 105-2). The proposed Mediator will be assigned to the case unless an objection is made pursuant to Section VII of these procedures.

D. Disqualification of Mediator – Any Mediator proposed for selection in a case may be disqualified for bias or prejudice as provided in 28 U.S.C. § 144, and will 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.

E. Mediator Unable to Serve – If, at any time, a Mediator is unable to serve in an assigned case, the Mediator must promptly file with the Court a Notice of Inability to Serve as Mediator (NVB 105-15) and serve it on all Required Parties.

1. Resignation of Mediator – In the event that a Mediator resigns, the parties must attempt to agree on a successor Mediator.

a. Parties Agree on Successor Mediator – If the parties agree on a successor Mediator, the party that requested referral to the MMM Program must file with the Court a Stipulation Assigning Successor Mediator (NVB 105-16) and concurrently lodge with the Court an Order Approving Stipulation Assigning Successor Mediator (NVB 105-17). Once the Order is entered, Debtor must promptly update the MMM Portal to identify the successor Mediator of the case.

b. Parties Do Not Agree on Successor Mediator – If the parties cannot agree on a successor Mediator within fourteen (14) days after the Mediator's resignation, the party that requested referral to the MMM Program must file, notice, and serve a Motion for Selection of Successor Mortgage Modification Mediator (NVB 105-18) in accordance with the requirements of Local Rule 9014. After notice and a hearing, the Court will select a successor Mediator. Unless otherwise ordered, the moving party must lodge with the Court an Order Approving Selection of Successor Mortgage Modification Mediation Mediator (NVB 105-19).

c. If the party that requested referral to the MMM Program fails to file either a Stipulation and Order Assigning Successor Mediator (NVB 105-16 and 105-17) or a Motion for Selection of Successor Mortgage Modification Mediator (NVB 105-18) within fourteen (14) days after the Mediator's resignation, the Stipulation or Motion may be filed by another Required Party.

2. Once a successor Mediator is assigned, Debtor must promptly update the MMM Portal to identify the successor Mediator of the case.

3. Unless otherwise ordered by the Court, if a Mediator received the $600.00 Mediator fee prior to becoming unable to serve in an assigned case, the resigning Mediator must turn over the Mediator fee to the successor Mediator within seven (7) days after the successor Mediator is assigned to the case.

F. Compensation of Mediators – Mediators will be compensated at the rate set by the U.S. Bankruptcy Court for the District of Nevada. Absent an agreement of the parties to the contrary, the cost of the Mediator's services will be borne equally by the parties to the MMM conference.

1. Unless otherwise agreed by the parties and the Mediator:
   a. Debtor and Lender must each pay $300.00 (one-half of the applicable $600.00 Mediator fee) directly to the Mediator within seven (7) days after the Mediator makes initial contact with the parties on the MMM Portal pursuant to Section IX(C)(1)(b) of these procedures.
   b. After providing the parties with instructions regarding payment of the $600.00 Mediator's fee pursuant to Section IX(C)(1)(b) of these procedures, the Mediator is not required to perform any MMM conferences until paid.
   c. Fees for additional MMM conferences beyond the initial 2 one-hour sessions must be divided equally between the parties.
      i. Payment must be made by the parties prior to the beginning of each successive MMM conference.
      ii. If Debtor is not represented by an attorney, Debtor must provide a money order or cashier's check to the Mediator in an amount equal to Debtor's share of the one-hour session at least 24-hours in advance of the MMM conference.
      iii. Any balance owed for a session extending beyond the pre-paid session must be paid as soon as possible, or within 2 business days following conclusion of the final session.

G. Duration of MMM Program – The Mediator must take appropriate steps consistent with Section III(B) of these procedures to ensure the entire MMM Program proceedings in a case are completed no later than one hundred and fifty (150) days after entry of the Order referring the case to the MMM Program, unless agreed to by the parties on the MMM Portal or extended by an order of the Court. If the parties reach a trial loan modification agreement through the MMM Program, this deadline will be extended for Debtor's completion of trial period payments and the execution of a final loan modification.

H. Responsibilities of Mediator – In addition to the duties identified throughout these procedures, the Mediator will be responsible for performing the following services with respect to the MMM Program:

1. Promptly acknowledge assignment as the Mediator on the MMM Portal and provide the parties with contact information and instructions regarding payment of the Mediator fee;
2. Communicate with the parties primarily through the MMM Portal;
3. Ensure the parties' ongoing compliance with the requirements of these procedures;
4. Verify Lender has received and reviewed Debtor's Prepared Package;
5. Ensure all necessary documentation is uploaded to the MMM Portal for Lender to complete an analysis of Debtor's mortgage modification options;
6. Report the scheduling of any and all MMM conferences on the MMM Portal;
7. Schedule the initial MMM conference to take place within ninety (90) days after entry of the Order referring the case to the MMM Program;
8. If necessary, schedule the second MMM conference to take place within thirty (30) days after the conclusion of the initial MMM conference;
9. Participate in a maximum of 2 one-hour MMM conferences, unless otherwise agreed by the parties pursuant to Section XI(A) of these procedures;
10. Facilitate communication and exchange of information on the MMM Portal and during all MMM conferences to encourage the parties to finalize a feasible and beneficial agreement;
11. Facilitate the discussion and resolution of issues related to claims secured by the real property subject to the MMM Program including, but not limited to, whether a final loan modification agreement recapitalizes pre-petition and/or post-petition arrears, and whether Lender intends to assert any post-petition fees, expenses, or charges pursuant to Federal Rule of Bankruptcy Procedure 3002.1(c);
12. Manage the mediation until a final loan modification has been executed or Lender has denied a final loan modification;
    a. The Mediator must maintain open MMM Portal access for all parties; and
    b. Ensure Lender's prompt action after Debtor's completion of trial period payments;
13. Timely file all Reports as required by Section XII of these procedures.

XVI. <u>Responsibilities and Compensation for Debtor's Counsel</u>

A. <u>MMM Program Responsibilities</u> – Debtor's attorney will be responsible for performing the following services with respect to the MMM Program:

1. Determine Debtor's eligibility to participate in the MMM Program;
2. Use the Document Preparation System to complete Debtor's Prepared Package;
3. Prepare all forms required for submission on the MMM Portal;
4. Submit all required documents and communications through the MMM Portal;
5. Verify the proposed Mediators' eligibility to serve;
6. Prepare, file, and serve the Motion for Referral to Mortgage Modification Mediation Program (NVB 105-2);
7. Prepare and file a Lender's Consent to Attend and Participate in Mortgage Modification Mediation Program (NVB 105-5) with the Motion for referral, if applicable;

8. Prepare and file a Third-Party Consent to Attend and Participate in Mortgage Modification Mediation Program (NVB 105-6) with the Motion for referral, if applicable;
9. Prepare and upload an Order Granting Motion for Referral to Mortgage Modification Mediation Program (NVB 105-3);
10. Serve the Order of referral on all Required Parties, including the Mediator and the Chapter 13 Trustee, and satisfy the additional requirements of Section VI(A)(5)(b) of these procedures if applicable;
11. File a Certificate of Service with the Court evidencing the parties were properly served with the Order of referral, along with the documents required under Section VI(A)(5)(b) if applicable;
12. Ensure all Mediator fees are timely paid to the Mediator;
13. Communicate with Lender and the Mediator in an attempt to promptly settle or otherwise resolve all matters;
14. Attend all MMM conferences;
15. Prepare, file, and serve a Motion to Approve Trial Loan Modification Agreement (NVB 105-9) and upload an Order Approving Trial Loan Modification Agreement (NVB 105-10) (if a trial loan modification agreement is reached);
16. Prepare, file, and serve a Motion to Approve Final Loan Modification Agreement (NVB 105-11) and upload an Order Approving Final Loan Modification Agreement (NVB 105-13) (if a final loan modification agreement is reached);
17. Review all modified loan documents;
18. Prepare and file all other pleadings required to promptly settle the matter, if necessary; and
19. Prepare any Motion and Notice of Hearing to be served upon all parties, and Order if approved by the Court, if necessary.

B. <u>MMM Program Attorney Compensation</u>

1. Attorney for Debtor will be permitted to charge no more than $2,500.00 in attorney's fees and $120.00 in expenses for participation in the MMM Program. In the event the attorney pays the MMM expenses required to be paid by Debtor, the attorney is permitted to seek reimbursement of those expenses in addition to the $120.00 in expenses listed above. Total expenses shall not exceed $500.00.

2. Attorney for the Debtor may file an Ex Parte Application for Compensation and Reimbursement of MMM Expenses (NVB 105-22) with the Court to be paid MMM Program fees and expenses through the Chapter 13 Trustee upon completion of the requirements set forth in subsections (a) and (b) below:

   a. The sum of $2,000.00 will be presumed to compensate Debtor's attorney for initial services relating to the MMM Program, including but not limited to collecting and uploading documents to the MMM portal, drafting and filing the Motion for referral, communicating with Lender and Mediator, and completing the services outlined in Section XVI(A)(1-14) of these

procedures. These fees will become payable upon the Mediator's scheduling of the initial MMM conference under Section IX(C)(2) of these procedures.

b. The remaining balance of $500.00 will become payable upon completion of the services outlined in Section XVI(A)(15-19) of these procedures.

3. The attorney's Ex Parte Application for Compensation and Reimbursement of MMM Expenses (NVB 105-22) must be properly supported by a Declaration certifying that the applicable requirements of Section XVI(A) have been satisfied.

4. Concurrently with the filing of the Application, the attorney must lodge with the Court an Order Approving Ex Parte Application for Compensation and Reimbursement of MMM Expenses (NVB 105-23). The Court may enter the Order an *ex parte* basis.

XVII. <u>Monitoring and Status Conferences</u>

A. The Mediator and Required Parties will be primarily responsible for monitoring compliance with the requirements of these procedures.
   1. If a Required Party or the Mediator fails to comply with any of the deadlines, payment requirements, or other provisions set forth in these procedures, the parties should first attempt to resolve the issue by communicating through the MMM Portal.
   2. In the event the parties cannot resolve an issue through the MMM Portal, a party may file with the Court a Request for Mortgage Modification Mediation Status Conference (NVB 105-20) and set the matter for hearing pursuant to Local Rule 9014 using a Notice of Hearing on Request for Mortgage Modification Mediation Status Conference (NVB 105-21). Unless otherwise ordered by the Court, all deadlines set forth in the Order of referral will be suspended pending resolution of the Motion.

B. In order for the Court to monitor the Required Parties' compliance with the requirements of these procedures, the Chapter 13 Trustee will bring the following issues before the Court at the next scheduled confirmation hearing:
   1. Failure to file a Motion for referral to the MMM Program with the Court within the 90-day deadline set forth in Section VI(A)(3)(a) of these procedures;
   2. Failure of the MMM Program proceedings in a case to be completed within the one hundred and fifty (150) day deadline established by Sections III(B) and XV(G) of these procedures;
   3. Failure to make payments under these procedures including, but not limited to, ongoing mortgage payments, trial loan modification payments, final loan modification payments, adequate protection payments, arrearages, and post-petition fees and costs (if any), and Chapter 13 Plan payments;
   4. Other non-compliance including, but not limited to, failure to file, serve, and notice for confirmation an Amended Chapter 13 Plan or Modified Chapter 13

Plan providing for appropriate treatment of Lender's claim after conclusion of the MMM conferences.

C. The Court may set status conferences in the exercise of its discretion in order to monitor compliance with the requirements of these procedures.