

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re)
)
ADMINISTRATIVE ORDER) Administrative Order
PRESCRIBING PROCEDURES FOR) FLMB-2017-1
MORTGAGE MODIFICATION)
MEDIATION)
_____)

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

The Bankruptcy Court for the Middle District of Florida has adopted the following uniform mortgage modification mediation (“MMM”) procedures throughout the District. All parties participating in the Court’s MMM 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 real property.
2. A motion seeking MMM shall include, **on the first page** a complete property address of the property and the last four digits of the mortgage loan number. If not included, the Court will abate the motion until an amended motion containing the required information is filed.
3. Negative notice is not required for a motion seeking MMM; however, 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 to a Chapter 12 or 13 case. The Court will prepare and enter an order directing MMM on timely filed motions. If a motion is not timely filed, the Court may set a hearing and will grant the request only if good cause is demonstrated for the delay.

5. The parties shall 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, described below, by stipulation of the parties, or by Court order.

6. Within 14 days after the entry of the order directing MMM the parties shall jointly select a mediator qualified under Administrative Order FLMB-2015-5. If the parties cannot agree on a mediator, Debtor shall select a 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 select the mediator.

7. Debtor and Lender each shall pay \$250 directly to the mediator within seven days of designating the mediator. Parties also shall equally pay the Mediator for any additional hourly fees incurred in MMM conferences that extend beyond two, one-hour sessions. The Mediator shall file a report within seven days of each mediation conference indicating the current status of the mediation. If a Mediator fails to comply with this reporting requirement, upon motion, notice, and hearing, the Court may order a Mediator to disgorge mediation fees and the Mediator's removal from the Registered Mediation Panel.

8. Parties shall use a secure portal (the "Portal") (e.g., <https://www.dclmwp.com/Home>) for submission of documents to initiate the MMM and follow guidelines 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. Using the Court's negative notice procedures, Debtor shall file a motion to approve a *permanent* mortgage modification. The motion must contain the agreed terms of the modification, the new mortgage payments, and the lender's mailing address.

12. Orders approving a permanent MMM agreement (i) shall be in a format that can be recorded in the public records of the county where the property is located, and (ii) should be recorded by 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 shall provide adequate protection to the lenders through payments made to the Chapter 12 or 13 Trustee. For *homestead* properties, Debtor shall pay the lesser of (a) 31% of their gross disposable income (after deducting homeowner association fees), or (b) the normal monthly contractual mortgage payment. For *non-homestead* income producing property, Debtor shall pay 75% of the gross rental income generated by the property. The Chapter 12 or 13 Trustee shall hold these adequate protection payments pending further Order or a joint stipulation of the parties for disbursement. In all other chapters, 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. If a debtor in Chapter 12 or Chapter 13 case is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Chapter 12 or Chapter 13 Plan.

15. Unless the parties have agreed to the contrary, MMM payments made during the MMM process will be applied under the loan documents and non-bankruptcy law.

16. MMM is deemed concluded upon the earliest of: (a) the filing of report of conclusion by the Mediator, (b) an order approving a temporary or permanent payment plan, or

(c) other order of the Court indicating the MMM concluded. Upon conclusion of the MMM, any payments not yet disbursed to the lender by the Chapter 12 or 13 Trustee shall be disbursed:

- A. If MMM resulted in an agreed mortgage modification agreement, which may include the lender's decision to decline receipt of additional funds, as agreed by the parties.
- B. If MMM did not result in a mortgage modification agreement, then
 - (i) To the lender to be applied under the applicable loan documents and non-bankruptcy law, or
 - (ii) If the lender affirmatively rejects the undisbursed funds, the Chapter 12 or 13 Trustee shall distribute payments as provided by the Chapter 13 Plan or Confirmation Order.

17. Notwithstanding the foregoing, if a Chapter 12 or 13 case is dismissed or converted to a Chapter 7 or 11 case, the Chapter 12 or 13 Trustee shall disburse any funds remaining in the Trustee's possession to Debtor and, if Debtor is represented by an attorney, the Trustee shall mail the funds to Debtor in care of Debtor's attorney.

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

19. 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: March 9, 2017.



MICHAEL G. WILLIAMSON
Chief United States Bankruptcy Judge