

Mortgage Modification Mediation (MMM) Program Procedures

United States Bankruptcy Court, District of Arizona

Table of Contents

I.	Purpose.....	2
II.	Definitions.....	2
III.	General Duties of Parties	3
IV.	MMM Portal, Document Preparation Software, and MMM Forms	3
V.	Debtors Eligible to Participate	4
VI.	Request for Referral to MMM	5
VII.	Process for Selection of Mediator	6
VIII.	Third-Party Consent.....	7
IX.	Requirements Upon Entry of Referral Order.....	7
X.	Attendance at Mortgage Modification Mediation Conferences.....	10
XI.	MMM Conference Procedures.....	11
XII.	Procedures Following MMM Conferences.....	12
XIII.	Chapter 7 – Additional Procedural Requirements	14
XIV.	Chapter 13 – Additional Procedural Requirements	16
XV.	Chapters 11 and 12 – Additional Procedural Requirements	18
XVI.	Effect of Referral to MMM Program.....	19
XVII.	Mediator Procedures, Compensation, and Responsibilities.....	20
XVIII.	Responsibilities and Compensation of Debtor’s Attorney.....	25
XIX.	Monitoring and Status Conferences.....	28

Mortgage Modification Mediation (MMM) Program Procedures
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- I. Purpose** – These procedures and forms implement the Mortgage Modification Mediation (MMM) Program pursuant to General Order 23-2. 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 Arizona.
- II. Definitions** – The following definitions shall be applicable to the MMM procedures.
- (A) Additional Parties – Includes any non-filing co-obligor/co-borrower, or third party obligated on the note or mortgage who is required to participate in the MMM Program pursuant to Lender guidelines.
 - (B) Completed Package – Debtor’s Prepared Package along with any additional documents or information specified by Lender pursuant to Section IX(B)(1)(a) of these procedures, as submitted on the MMM Portal.
 - (C) Debtor – The individual debtor or both debtors in a joint petition.
 - (D) Debtor’s Prepared Package – Debtor’s initial loan modification forms completed using the Document Preparation Software, and the supporting documentation required for submission to Lender for review through the MMM Portal.
 - (E) Estimated Monthly Payments (“EMP”) – the lesser of (a) 31% of Debtor’s gross monthly income less any monthly amount paid towards HOA fees due for the property (exclusive of applicable trustee’s fees) or (b) the regular monthly payment, or such other amount designated by the Lender for the property subject to the MMM Program.
 - (F) File Submitted Date – The date upon which Debtor shall have completed its obligations under Section IX(A)(1) of these procedures, as evidenced on the MMM Portal.
 - (G) Lender – The current beneficiary and payee of the promissory note secured by the deed of trust, and/or its mortgage servicing agent.
 - (H) Mediator – The individual, chosen by the Required Parties and assigned by the Court pursuant to an Order, who will act to facilitate a mortgage modification.
 - (I) Required Parties – Includes, when applicable, Debtor, Debtor’s attorney, Lender, Lender’s Arizona attorney, any “Additional Parties,” as defined above, and Mediator (also referred to as “parties” in these procedures).

III. General Duties of Parties

- (A) Conduit Payment Requirement in a Chapter 13 Case – 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, Estimated Monthly Payments, arrearages, and post-petition fees and costs (if any).
- (B) Payment of Chapter 13 Trustee Fee – In Chapter 13 cases, a Debtor who seeks referral to the MMM Program consents to pay the Chapter 13 trustee the statutory trustee fee for all conduit disbursements made by the Chapter 13 trustee to the Lender after entry of the MMM referral order.
- (C) Duration of MMM Program – The entire MMM proceedings in a case shall 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 shall be automatically extended for sixty (60) days after the last trial loan modification payment.
- (D) Good Faith – All Required Parties shall 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 trustee, the Court may impose appropriate sanctions after notice and a hearing.
- (E) Compliance with Bankruptcy Code and Rules – Nothing in these procedures shall relieve Required Parties 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.

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 Debtor’s loan modification package (the “Document Preparation Software”), and local MMM forms (the “MMM Forms”) in an effort to expedite the exchange of information between Debtor and Lender.

- (A) Portal Vendor – The MMM Portal is managed and maintained by Stretto Default Solutions – DMM Portal (“Stretto” and/or “DMM”).
 - (1) The MMM Portal can be accessed at <https://dclmwp.com>.
 - (2) The Document Preparation Software can be accessed through the MMM Portal or at <https://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 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 and unnecessary delay based upon incomplete documentation.
 - (2) The Court’s webpage 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 shall be available to all Debtors, Lenders and attorneys. This training may be found on the MMM Portal website referenced in section IV(A)(1) above or at this link: <https://help.dclmwp.com/en/articles/3633928-borrower-attorney-new-users-guide>.
- (C) Required Use of MMM Forms – Unless otherwise permitted by the Court, the MMM Forms prescribed by these procedures, and referred to herein as MMM Forms, shall be used without material alteration. The MMM Forms shall not be modified to affect the wording, substance, or the order of information. The MMM Forms are available on the Court’s webpage as PDF fillable forms.

V. Debtors Eligible to Participate

- (A) To be eligible to participate in the MMM Program, Debtor must:
- (1) Be an individual; and
 - (a) Have a case currently pending under Title 11, Chapter 7, of the United States Code in the District of Arizona with such case having been filed under Chapter 7, or having been converted to an eligible Chapter 7, on or after July 1, 2023; or
 - (b) Have a case currently pending under Title 11, Chapter 11 (including Subchapter V), 12 or 13, of the United States Code in the District of Arizona; and
 - (2) Have the ability to immediately pay the applicable Document Preparation Software fee (\$60.00), the applicable MMM Portal submission fee (\$60.00), and \$300.00 (one half of the \$600.00 Mediator’s fee) to Mediator; and

- (3) Have sufficient monthly disposable income to make the Estimated Monthly Payment, plus any amount required by a Chapter 13 plan, if applicable.
- (B) Prior to filing a motion to participate in the MMM Program, a Debtor who seeks to modify a mortgage must:
- (1) Pay the bankruptcy filing fee in full; or
 - (2) Apply for a fee waiver (Chapter 7 cases only); or
 - (3) Be current on installment payments ordered by the Court.
- (C) If a Debtor's case is dismissed or removed from the District of Arizona prior to Debtor's completion of the MMM Program, the MMM proceedings in the case will immediately terminate and the parties will be relieved of the requirements of these procedures.

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 Debtor's Prepared Package using the Document Preparation Software and pay the \$60.00 non-refundable fee directly to the vendor.
- (2) Verify Eligibility of Mediator – Prior to filing a Motion for Referral to the MMM Program, an eligible Debtor seeking referral to the MMM Program shall communicate with a proposed mediator listed on the Registry 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) For Chapter 13 Proceedings – Filing an Amended or Modified Plan – Prior to or along with the filing of a Motion for Referral to the MMM Program, an eligible Debtor must file an amended or modified Chapter 13 plan consistent with Section XIV of these procedures.
- (4) Filing the Motion for Referral – After completing Debtor's Prepared Package and identifying a proposed mediator, an eligible Debtor may seek referral to the MMM Program by completing and filing a Motion for Referral to Mortgage Modification Mediation Program (the "Motion for Referral") (MMM Form 2) with the Court.
 - (a) The Motion for Referral must identify the proposed mediator eligible for assignment pursuant to Sections VII and XVII(C) of these procedures.

- (b) Debtor may seek Lender’s consent for referral to the MMM Program prior to filing the Motion for Referral. If Lender provided Debtor with written consent to entry of an Order referring the case to the MMM Program, Debtor must include Lender’s Consent to Attend and Participate in Mortgage Modification Mediation Program (MMM Form 5) with the Motion for Referral.
- (5) Entry of Referral Order – Concurrently with the filing of the Motion for Referral, Debtor shall lodge with the Court an Order on Motion for Referral to Mortgage Modification Mediation Program (MMM Form 3). The Court may enter an Order referring the case to the MMM Program (the “Referral Order”).
- (6) Deadline for Motion to Reconsider – The Referral Order shall establish a fourteen (14) day deadline for the non-moving party to seek reconsideration of the Referral Order. If a timely Motion for Reconsideration is filed with the Court:
 - (a) The moving party shall promptly schedule a hearing; and
 - (b) All deadlines set forth in the Referral Order shall be suspended pending resolution of the Motion for Reconsideration.
- (7) Notice and Service Requirements – Upon entry of the Referral Order, the moving party shall:
 - (a) Serve a copy of the Referral Order on all Required Parties and any trustee appointed in the case; and
 - (b) File a Certificate of Service with the Court evidencing proper service of the Referral Order.
- (B) By Lender – If Lender desires to commence MMM proceedings in a case, it shall follow the same steps required of Debtor under Sections VI(A)(2) and (A)(4-7) of these procedures and use the same applicable forms, modified as appropriate.

VII. Process for Selection of Mediator – Upon entry of the Referral Order, the proposed mediator included in the Motion for Referral shall be assigned as Mediator, if no party objects.

- (A) Objection to Proposed Mediator – If a party objects to the proposed mediator, such objection shall be made through the MMM Portal after the File Submitted Date. The parties shall communicate and attempt to agree on a successor mediator within fourteen (14) days after the File Submitted Date.
- (B) Parties Agree on Successor Mediator – If the parties agree on a successor mediator, the objecting party shall file with the Court a Stipulation Assigning Successor Mortgage Modification Mediator (MMM Form 16) and concurrently lodge with the

Court an Order Approving Stipulation Assigning Successor Mortgage Modification Mediator (MMM Form 17). Once such order is entered, Debtor shall promptly update the MMM Portal to identify the successor Mediator.

- (C) Parties Do Not Agree on Successor Mediator – In the event the parties cannot agree on a successor mediator, within fourteen (14) days after the File Submitted Date, the objecting party must file with the Court an Objection to Selection of Mortgage Modification Mediation Program Mediator (MMM Form 4, as modified appropriately) (“Objection to Mediator”) and set the matter for hearing. After notice and a hearing, the Court shall assign a successor Mediator. Debtor shall then promptly update the MMM Portal to identify the successor Mediator.
- (D) Failure to Timely Object – If the objecting party fails to timely file the Objection to Mediator and notice it for hearing, the mediator identified in the Referral Order shall remain as the assigned Mediator.

VIII. Third-Party Consent – If Lender’s guidelines require any Additional Parties to participate in the MMM Program, Debtor shall file with the Motion for Referral a Third-Party Consent to Attend and Participate in the Mortgage Modification Mediation Program (MMM Form 6), completed by each required co-obligor, co-borrower or third-party. Debtor may submit, or Lender may request, additional documentation such as certified copies of a divorce decree and/or a quit claim deed, or other documents evidencing any change in status of the co-obligor/co-borrower/third-party.

IX. Requirements Upon Entry of Referral Order – The parties and Mediator are required to comply with all deadlines set forth in the Referral Order. Any deadlines imposed by the Referral Order may be extended by further order of the Court, which can be filed on an *ex parte* basis upon written agreement of the parties and Mediator on the MMM Portal.

(A) Debtor Requirements Following Entry of Referral Order

- (1) Within seven (7) days after entry of the Referral Order or Lender’s registration on the MMM Portal, whichever is later, Debtor shall:
 - (a) Pay the non-refundable MMM Portal submission fee of \$60.00 directly to the MMM Portal vendor; and
 - (b) Upload to the MMM Portal:
 - (i) A copy of the Referral Order;
 - (ii) Debtor’s Prepared Package; and
 - (c) Identify the assigned Mediator on the MMM Portal.

The date upon which Debtor shall have completed its obligations under this Section IX(A)(1) as evidenced on the MMM Portal is the File Submitted Date.

- (2) Within seven (7) days after receiving instructions from the Mediator pursuant to Section IX(C)(1)(b) of these procedures regarding payment of Mediator's fee, Debtor shall pay \$300.00 (one-half of the applicable \$600.00 Mediator's fee) directly to the Mediator. Failure to timely make such payment may result in a summary dismissal of the MMM proceeding per Section XVII(F)(2) of these procedures.
- (3) If, pursuant to Section IX(B)(5) of these procedures, Lender requests additional documents or information from Debtor, Debtor shall provide such documents or information to Lender on the MMM Portal within fourteen (14) days after receiving such request.

(B) Lender Requirements Following Entry of Referral Order

- (1) Within fourteen (14) days after entry of the Referral Order, Lender and Lender's Arizona attorney (if any) shall register on the MMM Portal (if not already registered).
 - (a) As part of the registration process for the MMM Portal, Lender shall provide to the MMM Portal vendor all applicable initial mortgage modification requirements, including any additional documents and information necessary to deem Debtor's Prepared Package a Completed Package. In the event Lender is already registered at the time the Referral Order is uploaded to the MMM Portal, Lender shall be responsible for providing any updates or additional documents to the MMM Portal vendor.
 - (b) A list of Lender's mortgage modification requirements and any additional documents necessary to deem Debtor's Prepared Package a Completed Package shall be posted on the MMM Portal by the MMM Portal vendor.
- (2) Within seven (7) days after receiving instructions from Mediator pursuant to Section IX(C)(1)(b) of these procedures regarding payment of Mediator's fee, Lender shall pay \$300.00 (one-half of the applicable \$600.00 Mediator fee) directly to Mediator. Failure to timely make such payment may result in a summary dismissal of the MMM proceeding per Section XVII(F)(2).
- (3) Within seven (7) days after Debtor submits Debtor's Prepared Package on the MMM Portal, Lender shall on the MMM Portal:
 - (a) Acknowledge receipt of Debtor's Prepared Package; and
 - (b) Designate its single point of contact and Arizona attorney (if any).

- (4) Lender's designated single point of contact and Arizona attorney shall have all requisite authority (within the investor's guidelines) to settle any and all issues that may arise during the MMM conferences and will attend and continuously participate in all MMM conferences in the case.
- (5) After receiving Debtor's Prepared Package pursuant to Section IX(A)(1)(b)(ii) of these procedures, Lender shall have sixty (60) 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 sixty (60) day period set forth above.
 - (b) If no request for additional documents or information is made by Lender within sixty (60) days, Debtor's Prepared Package is deemed a Completed Package.
- (6) Lender shall timely review and underwrite the loan modification request once Debtor's Prepared Package is deemed a Completed Package.
- (7) Lender shall indicate its final decision on the MMM Portal.
- (8) If at any time Lender transfers a loan subject to the MMM Program, Lender or Debtor shall promptly update the MMM Portal to identify the new holder of the loan (the "Successor Lender"). The Successor Lender shall:
 - (a) Be obligated to comply with all terms of the Referral Order; and
 - (b) Within twenty-one (21) days of the transfer, acknowledge that it is the new holder of the loan on the MMM Portal and communicate to Debtor and Mediator on the MMM Portal whether any additional documents or information are necessary to perfect Debtor's Prepared Package pursuant to Section IX(B)(5) of these procedures.

(C) Mediator Requirements Following Entry of Referral Order

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

- (2) Mediator shall schedule the initial MMM conference to take place within ninety (90) days after entry of the Referral Order unless an agreement is reached without the need for an MMM conference. The initial MMM conference may be scheduled at any time, at the discretion of the Required Parties or Mediator.
 - (a) Mediator may communicate with the parties in whichever manner the parties and Mediator agree.
 - (b) After consultation with the parties, Mediator shall fix a reasonable time and place for the MMM conferences.
 - (c) Mediator shall give the parties at least seven (7) days' notice on the MMM Portal of the date, time, and place for the MMM conferences.
 - (d) Mediator shall 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 shall attend all MMM conferences and be authorized to settle all matters requested in the Motion for Referral.
- (B) Debtor
 - (1) Debtor may participate in MMM conference(s) by any method (in-person, virtual, telephone, etc.) agreed upon by the Required Parties.
 - (2) If Debtor is not represented by an attorney, Mediator must confirm the identification of Debtor prior to the MMM conference.
 - (3) If Debtor requires the assistance of a foreign language interpreter, Debtor shall provide an interpreter at Debtor's own expense.
- (C) Lender – Lender's designated representative and Lender's attorney (if any) may participate in MMM conference(s) by any method (in-person, virtual, telephone, etc.) agreed upon by the Required Parties.
- (D) Other Parties – If the Required Parties agree, any other party may participate in the MMM conference(s) by any method (in-person, virtual, telephone, etc.) agreed upon by the Required Parties. If any other party is not represented by an attorney, Mediator must confirm the identification of the other party prior to the MMM conference.
- (E) Public Entities – If a party to the mediation is a public entity, the entity shall 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 shall not exceed one (1) hour in duration unless otherwise agreed by the parties and Mediator. In the event the parties are unable to reach an agreement, Mediator shall 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 shall also not exceed one (1) hour in duration unless otherwise agreed by the parties and Mediator. If necessary, with consent of the parties, 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 two (2) hours, unless otherwise ordered by the Court.
- (B) Mandatory Attendance of Parties – Mediator may conduct MMM conferences in a manner which, in Mediator’s discretion, best facilitates open communication, exchange of information, and the finalization of a feasible and beneficial agreement between the parties. For example, Mediator may determine when the parties are to be present in the conference room, or Mediator may permit telephonic appearances if all the parties agree, with such calls initiated by Mediator, which may include designation of a call-in number.
- (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 shall 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). Nothing in these procedures shall preclude the parties from using the MMM Conference to pursue other exit strategies for Debtor, including, but not limited to, a deed in lieu of foreclosure or a delayed move-out date.
- (D) Authority and Ability to Finalize Agreement – Each party and their representatives shall appear with the full authority to negotiate the amount and issues in dispute without further consultation. All parties attending the MMM conferences shall be ready, willing, and able to sign a binding settlement agreement. At all MMM conferences the parties shall 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 shall be privileged and confidential and shall be inadmissible in any subsequent proceeding as provided for by Rule 408 of the Federal Rules of Evidence.
- (2) In Chapter 11, 12, and 13 cases, any trustee appointed in the case shall have complete access to the MMM Portal but shall 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 Mediator shall upload to the MMM Portal and file with the Court an Interim Report of Mortgage Modification Mediation Program Mediator (the “Interim Report”) (MMM Form 7).
- (2) Within seven (7) days after Mediator files the Interim Report with the Court:
 - (a) Debtor shall file a Motion to Approve Trial Loan Modification Agreement (MMM Form 9A or 9B, as applicable).
 - (b) Debtor shall lodge with the Court an Order Approving Trial Loan Modification Agreement (MMM Form 10A or 10B, as applicable).
 - (c) Once entered by the Court, Debtor shall serve a copy of such order on all Required Parties and the trustee, if applicable, and file a certificate of service demonstrating that such parties were properly served.
- (3) All Required Parties shall 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 shall 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 Mediator shall upload to the MMM Portal and file with the Court a Final Report of Mortgage Modification Mediation Program Mediator (the “Final Report”) (MMM Form 8).
- (2) Within fourteen (14) days after Mediator files the Final Report with the Court:

- (a) Debtor shall file a Motion to Approve Final Loan Modification Agreement (MMM Form 11A or 11B, as applicable).
 - (i) If Debtor is represented by an attorney, this Motion may be filed *ex parte*. Debtor's counsel shall concurrently lodge with the Court an Order Approving Final Loan Modification Agreement (MMM Form 13A or 13B, as applicable).
 - (ii) If Debtor is not represented by an attorney, this Motion must be noticed, served, and set for hearing using a Notice of Hearing on Pro Se Debtor's Motion to Approve Final Loan Modification Agreement (MMM Form 12).
 - (b) Once the Order Approving Final Loan Modification Agreement is entered by the Court, either *ex parte* or after notice and hearing, Debtor shall serve a copy of the Order Approving Final Loan Modification on all Required Parties and the trustee, if applicable, and file a certificate of service demonstrating that such parties were properly served.
 - (3) In Chapter 13 Proceedings – Within twenty-eight (28) days after entry of the Order Approving Final Loan Modification, Debtor shall file 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.
 - (4) In Chapter 11 and Chapter 12 Proceedings – The Final Loan Modification Agreement shall be binding upon the parties upon entry of the Order Approving Final Loan Modification. Debtor shall incorporate the terms of the Final Loan Modification Agreement into the Plan.
- (C) No Agreement – If the parties fail to reach an agreement:
- (1) Within seven (7) days after the conclusion of the MMM conferences Mediator shall upload to the MMM Portal and file with the Court the Final Report of Mortgage Modification Mediation Program Mediator (MMM Form 8).
 - (2) In Chapter 7, Chapter 11 and Chapter 12 Proceedings – No further action is necessary on the part of Debtor after Mediator files the Final Report of Mortgage Modification Mediation Program Mediator Report (MMM Form 8), except as otherwise provided in these procedures.
 - (3) In Chapter 13 Proceedings – Within twenty-eight (28) days after Mediator files the Final Report of Mortgage Modification Mediation Program Mediator Report (MMM Form 8) with the Court, Debtor shall file 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 7 – Additional Procedural Requirements

(A) Deadline for Referral to MMM Program

- (1) Debtor shall request referral to the MMM Program within forty-five (45) days after filing the bankruptcy petition, or within thirty (30) days after entry of an Order converting the case to Chapter 7 (but only if Debtor did not participate in the MMM Program prior to conversion), unless the Court orders otherwise, for cause.

(B) Establishing an EMP Account

- (1) Within fourteen (14) days after filing the Motion for Referral, Debtor shall open a separate bank account (the “EMP Account”) for the sole purpose of depositing the Estimated Monthly Payment. If represented by an attorney, Debtor’s attorney may use his/her IOLTA Trust Account (the “IOLTA Account”) in lieu of opening an EMP Account, if so desired.
- (2) Debtor shall deposit the initial Estimated Monthly Payment into the EMP Account or IOLTA Account and shall upload proof of the deposit to the MMM Portal within thirty (30) days after filing the Motion for Referral.
- (3) Debtor shall deposit an Estimated Monthly Payment into the EMP Account or IOLTA Account every thirty (30) days thereafter and shall promptly upload proof of each deposit to the MMM Portal within seven (7) days of the deposit. The requirement for making EMP deposits shall stop upon (a) entry of an Order Approving Trial Loan Modification or (b) entry of the Mediator’s Final Report stating that mediation was unsuccessful, pursuant to Section XII of these procedures.
- (4) If Debtor fails to timely upload proof of an Estimated Monthly Payment deposit, Lender may seek appropriate relief from the Court.
- (5) All Estimated Monthly Payments shall remain in the EMP Account or the IOLTA Account until entry of an Order directing disbursement of the funds, pursuant to Section XIII(D)(1) of these procedures.

(C) Trial Loan Modification – If an Order Approving Trial Loan Modification Agreement is entered by the Court, Debtor shall commence and maintain trial loan modification payments to Lender pursuant to the trial loan modification agreement until:

- (1) Further Order of the Court;

(2) An Order Approving Final Loan Modification Agreement is entered, in which case Debtor shall commence and maintain payments according to the final loan modification; or

(3) A final loan modification is denied by Lender.

(D) Disbursements from EMP Account or IOLTA Account

(1) Unless otherwise ordered by the Court, Estimated Monthly Payments made pursuant to Section XIII(B) of these procedures must remain in the EMP Account or IOLTA Account, until the Court enters an Order:

(a) Approving payment of attorney's fees and directing disbursement from the EMP Account or IOLTA Account for representation of Debtor in the MMM Program; and/or

(b) Requiring funds in the EMP Account or IOLTA Account be paid to Lender as adequate protection; and/or

(c) Approving a Trial Loan Modification Agreement (MMM Form 10A) and directing some or all of the funds in the EMP Account or IOLTA Account to be paid to Lender or released to Debtor; and/or

(d) Approving Final Loan Modification Agreement (MMM Form 13A) and directing some or all of the funds in the EMP Account or IOLTA Account to be paid to Lender or released to Debtor, as applicable; and/or

(e) Granting the Motion for Release of Funds (MMM Form 26) upon consideration of a Motion for Release of Funds (MMM Form 25) filed by Debtor; and/or

(f) Otherwise directing the payment, distribution, or release of funds in the EMP Account or IOLTA Account.

(2) Debtor, or Debtor's counsel, shall promptly disburse the funds from the EMP Account or IOLTA Account, pursuant to any Court's Order(s). If funds are not timely or properly disbursed as provided in the Court's Order(s), any of the Required Parties may seek termination of the MMM Program by filing a Request for Mortgage Modification Mediation Status Conference (MMM Form 21).

(3) If the MMM Program does not result in entry of an Order Approving Final Loan Modification, funds remaining in the EMP Account or IOLTA Account after conclusion of the MMM Program may only be disbursed upon further order of the Court as directed in Section XIII(D)(1) of these procedures.

- (E) Chapter 7 Discharge – Debtor’s Chapter 7 Discharge shall be delayed until conclusion of the MMM proceedings, either by entry of an Order Approving Final Loan Modification Agreement, or a Mediator’s Final Report indicating a final loan modification was denied by Lender and not timely appealed.

XIV. Chapter 13 – Additional Procedural Requirements

- (A) Referral to MMM Program Prior to Plan Confirmation – If Debtor seeks referral to the MMM Program prior to confirmation, Debtor shall file an initial Chapter 13 Plan or an Amended Chapter 13 Plan along with the Motion for Referral. The Chapter 13 Plan shall:

- (1) Provide for a plan payment of no less than the Estimated Monthly Payment.
- (2) Identify Lender participating in the MMM Program and omit any specific payment amount to Lender.
- (3) Indicate in Section (J) – “Varying Provisions” of the Chapter 13 Plan that:
 - (a) Debtor intends to participate in the MMM Program; and
 - (b) Chapter 13 trustee shall 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 initial or Amended Chapter 13 Plan or separate Court order provides otherwise.

- (4) Propose treatment of other creditor claims consistent with the Bankruptcy Code.

- (B) Referral to MMM Program After Plan Confirmation – If Debtor seeks referral to the MMM Program after confirmation of a plan, Debtor shall file a Modified Chapter 13 Plan in conjunction with the Motion for Referral. The Modified Chapter 13 Plan shall:

- (1) Provide for a plan payment of not less than the Estimated Monthly Payment.
- (2) Identify Lender participating in the MMM Program and omit any specific payment amount to Lender, other than any amount already paid by the Chapter 13 trustee.
- (3) Indicate in Section (J) – “Varying Provisions” of the Modified Chapter 13 Plan that:
 - (a) Debtor intends to participate in the MMM Program;
 - (b) Chapter 13 trustee shall 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) Chapter 13 trustee shall continue to make all other disbursements pursuant to other orders of the Court, including a previous order confirming plan.
- (C) Trial Loan Modification – If mediation resulted in an Order Approving Trial Loan Modification Agreement, the Chapter 13 trustee shall commence and maintain trial loan modification payments to Lender pursuant to the trial loan modification agreement until:
 - (1) Further Order of the Court;
 - (2) An Order Approving Final Loan Modification Agreement is entered, in which case the Chapter 13 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 shall file a Plan pursuant to Sections XIV(A) or (B) of these procedures, as applicable. If Debtor fails to timely file an Amended Chapter 13 Plan or Modified Chapter 13 Plan in accordance with these procedures, Lender and/or Chapter 13 trustee may seek appropriate relief from the Court.
- (E) Disbursements by Chapter 13 Trustee
 - (1) Unless otherwise ordered by the Court, the Chapter 13 trustee shall retain Estimated Monthly Payments made pursuant to Sections XIV(A) or (B) of these procedures until:
 - (a) An Order Approving Attorney’s Fees for representation of Debtor in the MMM Program is entered by the Court; and
 - (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 (MMM Form 10B); or
 - (ii) Debtor has filed a Motion to Approve Final Loan Modification Agreement (MMM Form 11B).
 - (2) Estimated Monthly Payments received timely by the Chapter 13 trustee pursuant to these procedures shall 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 Chapter 13 Plan after the conclusion of the MMM Program shall suspend and revoke any remaining obligations of Chapter 13 trustee to make disbursements pursuant to an Order Approving Trial Loan Modification Agreement (MMM Form 10B) or Order Approving Final Loan Modification Agreement (MMM Form 13B).
- (F) Plan Confirmation – In cases where a trial and/or final modification has been reached, the Court will not confirm a proposed Chapter 13 Plan, Amended Chapter 13 Plan, or Modified Chapter 13 Plan which Debtor has proposed as part of the MMM Program until after:
- (1) The Court has entered an Order Approving Final Loan Modification Agreement (MMM Form 13B); 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 trustee may issue guidelines, consistent with these procedures, 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 their guidelines and shall reissue any revised guidelines with a notation of the effective date of the revision.

XV. Chapters 11 and 12 – Additional Procedural Requirements

- (A) Adequate Protection in Chapters 11 and 12 – If Lender believes its protection is inadequate, Lender may file a Motion for Adequate Protection.
- (B) Trial Loan Modification – If an Order Approving Trial Loan Modification Agreement is entered by the Court, Debtor shall commence and maintain trial loan modification payments to Lender pursuant to the trial loan modification agreement until:
- (1) Further Order of the Court;
 - (2) An Order Approving Final Loan Modification Agreement is entered, in which case Debtor shall commence and maintain payments according to the final loan modification; or
 - (3) A final loan modification is denied by Lender.

(C) Chapter 11 and 12 Plan Confirmation – In cases referred to the MMM Program, the Court will not confirm a proposed Chapter 11 or 12 Plan (including an Amended or Modified Chapter 11 or 12 Plan) until one of the following occurs:

- (1) Successful conclusion of the MMM Program:
 - (a) The Court has entered an Order Approving Final Loan Modification Agreement (MMM Form 13A); and
 - (b) The proposed Chapter 11 or 12 Plan (including Amended or Modified Chapter 11 or 12 Plan) accurately reflects the terms of the final loan modification agreement or otherwise satisfies the requirements 11 U.S.C. § 1129(b)(2)(A) with respect to Lender’s claim.
- (2) Failure of MMM Program:
 - (a) The Court denies approval of the Final Loan Modification Agreement; or
 - (b) Debtor has filed a notice with the Court withdrawing from the MMM Program; or
 - (c) Mediator’s Final Report is filed indicating a final loan modification was denied by Lender and not timely appealed.

XVI. Effect of Referral to MMM Program

(A) Automatic Stay and Adequate Protection

- (1) Upon entry of the Referral Order, 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 Referral Order, unless the Court orders otherwise, all pending motions for relief from the automatic stay with respect to real property subject to the MMM Program shall be continued until after such time that the MMM Program is completed. Unless otherwise ordered by the Court, the pendency of the MMM Program shall 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) Any party seeking relief from the automatic stay, or adequate protection, with respect to the real property subject to the MMM Program shall, in a motion filed, served, and noticed, 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 Local Rules of Bankruptcy Procedure for the District of Arizona. Notwithstanding a matter being referred to the MMM Program, proceedings in the bankruptcy case shall 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 shall remain open during the pendency of the MMM Program, unless otherwise ordered by the Court.

XVII. Mediator Procedures, Compensation, and Responsibilities

- (A) Court Approval of Mediators – The Court shall 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 XVII(B) of these procedures. Court approved mediators will be listed in the Court’s Registry of Mediators pursuant to Section XVII(B) of these procedures.
- (B) Registration of Mediators – The Clerk of the Court shall establish and maintain a registry of qualified individuals who have been approved by the Court to serve as mediators for the MMM Program (the “Registry of Mediators”). Mediators approved by the Court shall be listed on the Registry of Mediators for a duration of up to one (1) year commencing on the date of appointment or January 1st of each year, whichever is earlier. Mediators must reapply each year. Following approval from the Court, mediators must register directly on the MMM Portal so that Debtor may designate Mediator pursuant to Section IX(A)(c) of these procedures. Any mediator not listed on the Registry 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, an applicant must:
 - (a) Be a registered user on PACER and CM/ECF;
 - (b) Have successfully completed at least six (6) hours of MMM training; and
 - (c) Be one of the following:
 - (i) A licensed member, in good standing, of the State Bar of Arizona and admitted to practice law in a state court or federal court within Arizona for at least five (5) years;
 - (ii) A retired Arizona state court or federal court judge;

- (iii) An active panel trustee in good standing with the United States Trustee Program for the District of Arizona with at least five (5) years of service as a panel trustee in Arizona;
 - (iv) A mediator previously approved under MMM Procedures promulgated by a United States Bankruptcy Court in another district; or
 - (v) A Subchapter V trustee in good standing with the United States Trustee Program with at least two (2) years of experience as a Subchapter V trustee.
- (2) Mediator Application – Eligible applicants must complete the Verification of Qualifications to Act as Mediator in the Mortgage Modification Mediation Program (the “Mediator Verification”) (MMM Form 1) and file such verification with the Clerk of the Court for the U.S. Bankruptcy Court, District of Arizona. Annual applications shall be filed no later than November 1st of the preceding calendar year.
- (3) Mediator’s Oath – Every eligible applicant shall 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 shall be included with the Mediator Verification.
- (4) Standards of Professional Conduct – Any mediator appointed pursuant to these procedures shall 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 Registry of Mediators
- (a) The Clerk shall remove a mediator from the Registry 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 Registry of Mediators by completing and providing the Clerk of the Court with a Request for Removal from Mortgage Modification Mediation Program Registry of Mediators (MMM Form 14). The Clerk of the Court shall promptly remove a mediator from the Registry of Mediators at the mediator’s request. Any mediator voluntarily removed from the Registry of Mediators may later reapply by filing a new Mediator Verification.

¹ Available online at: https://www.americanbar.org/groups/dispute_resolution/resources/ethics/.

- (c) A mediator removed from the Registry of Mediators shall not accept any new cases and shall immediately contact the MMM Portal vendor to discontinue access to the MMM Portal. Unless otherwise ordered by the Court, a removed mediator may complete any pending mediations.
- (C) Selection of Mediator – After verifying that the proposed mediator is eligible to serve, the party moving for referral to the MMM Program shall identify the proposed mediator in the Motion for Referral. The proposed mediator will be assigned as Mediator 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 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.
- (E) Mediator Unable to Serve – If, at any time, Mediator is unable to serve in an assigned case, Mediator shall promptly file with the Court a Notice of Inability to Serve as Mediator (MMM Form 15) and serve it on all Required Parties.
- (1) Resignation of Mediator – In the event that Mediator resigns, the parties shall 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 shall file with the Court a Stipulation Assigning Successor Mortgage Modification Mediator (MMM Form 16) and concurrently lodge with the Court an Order Approving Stipulation Assigning Successor Mortgage Modification Mediator (MMM Form 17). Once the Order is entered, Debtor shall 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 Mediator’s resignation, the party that requested referral to the MMM Program shall file, notice, and serve a Motion for Selection of Successor Mortgage Modification Mediation Mediator (MMM Form 18). The moving party must set the Motion for hearing and serve a Notice of Hearing on Motion for Selection of Successor Mortgage Modification Mediation Mediator (MMM Form 19). After notice and hearing, the Court shall select a successor Mediator. Unless otherwise ordered, the moving party shall lodge with the Court an Order Approving Selection of Successor Mortgage Modification Mediation Mediator (MMM Form 20).
- (c) If the party that requested referral to the MMM Program fails to file either a Stipulation and Order Assigning Successor Mortgage Modification Mediator (MMM Form 16 and MMM Form 17) or a Motion for Selection of Successor Mortgage Modification Mediation Mediator (MMM Form 18) within

fourteen (14) days after Mediator's resignation, the Stipulation or Motion may be filed by another Required Party.

- (2) Once a successor Mediator is assigned, Debtor shall promptly update the MMM Portal to identify the successor Mediator of the case.
 - (3) Unless otherwise ordered by the Court, if the resigning Mediator received the \$600.00 Mediator fee prior to becoming unable to serve in an assigned case, the resigning Mediator shall 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 shall be compensated at the rate set by the U.S. Bankruptcy Court for the District of Arizona. Absent an agreement of the parties to the contrary, the cost of the Mediator's services shall be borne equally by Debtor and Lender.
- (1) Unless otherwise agreed by the parties and Mediator:
 - (a) Debtor and Lender shall each pay \$300.00 (one-half of the applicable \$600.00 Mediator fee) directly to Mediator within seven (7) days after 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, Mediator is not required to perform any MMM conferences until paid.
 - (c) Fees for additional MMM conferences beyond the initial two (2) one-hour sessions shall be divided equally between Debtor and Lender.
 - (i) Payment shall be made by Debtor and Lender prior to the beginning of each successive MMM conference.
 - (ii) If Debtor is not represented by an attorney, Debtor shall provide a money order or cashier's check to Mediator in an amount equal to Debtor's share of the one-hour session at least twenty-four (24) hours in advance of the MMM conference.
 - (iii) Any balance owed for a session extending beyond the pre-paid session shall be paid as soon as possible, or within two (2) business days following conclusion of the final session.
 - (2) If a Mediator is not paid by either Debtor or Lender within twenty-one (21) days after receiving instructions from Mediator pursuant to Section IX(C)(1)(b) of these procedures, Mediator may file a motion to dismiss the MMM proceedings, which may be summarily granted.

- (G) Duration of MMM Program – Mediator shall take appropriate steps consistent with Section III(B) of these procedures to ensure the entire MMM proceedings in a case are completed no later than one hundred and fifty (150) days after entry of the Referral Order, 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 shall be extended to sixty (60) days after the last trial loan modification payment.
- (H) Responsibilities of Mediator – In addition to the duties identified throughout these procedures, Mediator shall be responsible for performing the following services with respect to the MMM Program:
- (1) Promptly acknowledge assignment as 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 timely 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. If Lender has not reached an initial decision on the Modification within ninety (90) days of the MMM Order, schedule the initial MMM conference to take place as soon as possible after a decision is rendered by Lender or at any time requested by one of the Required Parties.
 - (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 two (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 by the parties and approved by the Court, or Lender has denied a final loan modification;
 - (a) Mediator shall facilitate 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; and
- (14) Request and appear at a status hearing in the event that one hundred and fifty (150) days passes without acceptance or denial of a loan modification (trial or final).

XVIII. Responsibilities and Compensation of Debtor's Attorney

- (A) MMM Program Responsibilities – If a Debtor seeks referral to the MMM Program, Debtor's attorney shall 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 generate MMM documents for Debtor's Prepared Package and review for accuracy;
 - (3) Obtain all other requested financial documents (per the docUmods checklist) required for Debtor's Prepared Package;
 - (4) Verify the proposed mediator's eligibility to serve;
 - (5) Prepare, file, and serve the Motion for Referral (MMM Form 2);
 - (6) Obtain and file a Lender's Consent to Attend and Participate in Mortgage Modification Mediation Program (MMM Form 5) with the Motion for Referral, if applicable;
 - (7) Obtain and file a Third-Party Consent to Attend and Participate in Mortgage Modification Mediation Program (MMM Form 6) with the Motion for Referral, if applicable;

- (8) Prepare and upload the Referral Order (MMM Form 3);
- (9) Immediately after the Referral Order is entered, serve the Referral Order on all Required Parties and any trustee appointed in the case, then file a Certificate of Service demonstrating that such parties were served, as required pursuant to Section VI(A)(7) of these procedures;
- (10) Within seven (7) days after entry of the Referral Order, upload Debtor's Prepared Package to the MMM Portal;
- (11) Ensure all Mediator fees due from Debtor are timely paid to Mediator;
- (12) Promptly communicate with Lender and Mediator in the MMM Portal to satisfy all document or information requests and resolve all matters;
- (13) Attend all MMM conferences, unless a modification agreement is reached prior to a scheduled conference;
- (14) Prepare, file, and serve a Motion to Approve Trial Loan Modification Agreement (MMM Form 9A or 9B, as applicable) and upload an Order Approving Trial Loan Modification Agreement (MMM Form 10A or 10B, as applicable) (if a trial loan modification agreement is reached);
- (15) Prepare, file, and serve a Motion to Approve Final Loan Modification Agreement (MMM Form 11A or 11B, as applicable) and upload an Order Approving Final Loan Modification Agreement (MMM Form 13A or 13B, as applicable) (if a final loan modification agreement is reached);
- (16) Review all modified loan documents;
- (17) Prepare and file all other documents or pleadings required herein to promptly effectuate a loan modification, if necessary; and
- (18) Prepare any Motion and Notice of Hearing to be served upon all parties, and Order if approved by the Court, if necessary.

(B) MMM Program Attorney Compensation

- (1) In all cases in which a Motion for Referral is filed on or after July 1, 2023, the attorney for Debtor shall be permitted to charge no more than \$3,000.00 in attorney's fees and \$100.00 in costs for participation in the MMM Program or as otherwise allowed by the Court.² In the event the attorney pays the MMM costs

² The prior caps on attorney fees of \$2,500 will continue to apply to cases in which the Motion for Referral was filed prior to July 1, 2023.

required to be paid by Debtor, the attorney is permitted to seek reimbursement of those costs in addition to the \$100.00 in costs as stated above.

- (a) The sum of \$2,500.00 shall 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 XVIII(A)(1-14) of these procedures. Debtor's attorney may apply for these fees upon the entry of an Order Approving Trial Loan Modification Agreement, or the filing of Mediator's Final Report to the Court stating that no agreement was reached pursuant to Section XII(C)(1) of these procedures.
 - (b) The remaining balance of \$500.00 shall be presumed to compensate Debtor's attorney for completion of the services outlined in Section XVIII(A)(15-18) of these procedures, and such amount shall become payable upon completion of these services.
- (2) Debtor's attorney may file an Application for Mortgage Modification Compensation and Reimbursement of Mortgage Modification Mediation Expenses (the "Fee Application") (MMM Form 23), which includes Debtor's attorney's certification that the applicable requirements of Section XVIII(A) have been satisfied. Debtor's attorney shall simultaneously lodge a form of Order Approving Application for MMM Compensation and Reimbursement of MMM Expenses (MMM Form 24A, 24B, or 24C) with the Court, upon completion of the requirements set forth in Sections XVIII(B)(1)(a) and (b) of these procedures, consistent with the following:
- (a) In Chapter 7 Proceedings – Approved attorney fees shall be paid by Debtor from Debtor's EMP Account or from Debtor's Attorney's IOLTA Trust Account, as applicable. Any funds remaining in the EMP Account after disbursement of Court approved fees and costs shall be property of the Debtor. Any funds related to Debtor's participation in the MMM Program that remain in Debtor's counsel IOLTA Account after the disbursement of Court approved fees and costs shall be returned to Debtor.
 - (b) In Chapter 13 Proceedings – Upon certification that Debtor's attorney has properly served the Order Approving Application for MMM Compensation and Reimbursement of MMM Expenses (MMM Form 24B) on the Chapter 13 trustee, the payment of all fees by the Chapter 13 trustee, through the confirmed plan, shall be subject to the availability of funds held by the Chapter 13 trustee less trustee fees and adequate protection payments due to creditors secured by personal property.

- (c) In Chapter 11 and 12 proceedings – Fee Application(s) may be allowed on an interim basis and Debtor shall be authorized to pay the approved fees to the extent that such payment does not prejudice creditors of equal priority.

XIX. Monitoring and Status Conferences

- (A) All Required Parties shall be responsible for monitoring compliance with the requirements of these procedures.
 - (1) If a Required Party 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 (the “Motion for Status Hearing”) (MMM Form 21) and set the matter for hearing using a Notice of Hearing on Request for Mortgage Modification Mediation Status Conference (MMM Form 22). Unless otherwise ordered by the Court, all deadlines set forth in the Referral Order shall be suspended pending resolution of the Motion for Status Hearing.
- (B) In order for the Court to monitor the Required Parties’ compliance with the requirements of these procedures the trustee appointed in the case may request a status hearing and bring any of the following issues before the Court:
 - (1) Failure of the MMM proceedings in a case to be completed within the one hundred and fifty (150) day deadline established by Sections III(B) and XVII(G) of these procedures;
 - (2) 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 any bankruptcy plan payments, where applicable; and/or
 - (3) Other non-compliance including, but not limited to:
 - (a) Failure to designate the assigned Mediator on the MMM Portal;
 - (b) Failure to timely tender the Mediator’s fee; or
 - (c) Failure to file an amended or modified bankruptcy plan, where applicable, 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.