

# Mortgage Modification Mediation (MMM) Program Procedures

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United States Bankruptcy Court, District of Arizona

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**Mortgage Modification Mediation (MMM) Program Procedures**  
United States Bankruptcy Court, District of Arizona

- I. Purpose** – These procedures and forms implement the Mortgage Modification Mediation (MMM) Program pursuant to General Order 16-2. 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. 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 Arizona attorney, 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 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 pursuant to Section IX(B)(1)(a) on the MMM Portal.
  - F. Estimated Monthly Payments – the lesser of (a) 31% of the Debtor’s gross monthly income less any 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 secured creditor for the property subject to the MMM Program.
- 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, Estimated Monthly Payments, arrearages, and post-petition fees and costs (if any).
  - B. Duration of MMM Program – The entire MMM Program 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 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 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 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 shall relieve 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.

**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 (the “MMM Forms”) in an effort to expedite the exchange of information between Debtor and Lender.

- A. Portal Vendor – The MMM Portal vendor is managed and maintained by Default Mitigation Management, LLC (“DMM”).
  - 1. The MMM Portal can be accessed at [www.dclmwp.com](http://www.dclmwp.com).
  - 2. The Document Preparation Software can be accessed through the MMM Portal or at [www.documods.com](http://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 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.

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 1-24, 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 1-24 are available on the Court’s web page.

**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 Arizona;
3. 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
4. Have sufficient monthly disposable income to make a Chapter 13 Plan payment of not less than the Estimated Monthly Payment.

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

C. If a Debtor’s Chapter 13 case is dismissed, converted, or otherwise 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 the Debtor’s Prepared Package using the Document Preparation Software and pay the \$40.00 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. 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 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 be filed within ninety (90) days of the petition date or the effective date of the MMM Program.
    - i. 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.
    - ii. If the Motion for Referral is filed in response to a motion for relief from stay, the Lender shall be presumed to object and the Debtor must satisfy the additional notice and service requirements set forth in Section VI(A)(6)(b) below.
  - b. The Motion for Referral 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 for Referral.
    - 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 (MMM Form 5) with the Motion for Referral.
    - 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 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 (the "Referral Order") (MMM Form 3). The Court may enter the Referral Order referring the case to the MMM Program.
5. 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.

6. Notice and Service Requirements

- a. Upon entry of the Referral Order, the moving party shall:
  - i. Serve a copy of the Referral 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 Referral Order.
- b. If Lender did not provide Debtor with written consent to entry of a Referral Order, immediately after entry of such order Debtor shall:
  - i. Serve a copy of the Referral 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 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)-(5) 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 Mediator proposed in the Motion for Referral shall be assigned to the case, 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 (as defined in Section IX(A)(1) below). 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 Mediator (MMM Form 16) and concurrently lodge with the Court an Order Approving Stipulation Assigning Successor Mediator (MMM Form 17). Once such order is entered, Debtor shall 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 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 Mediator. Once a Mediator is assigned, Debtor shall promptly update the MMM Portal to identify the Mediator of the case.

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 assigned to the case.

**VIII. Additional Parties** – 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 shall file with the Motion for Referral a Third-Party Consent to Attend and Participate in Mortgage Modification Mediation Program (MMM Form 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 must be set for hearing.

**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 or by 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 \$40.00 directly to the MMM Portal vendor; and
  - b. Upload to the MMM Portal:
    - i. A copy of the Referral Order;
    - ii. Debtor’s Completed Package; and
    - iii. Identify the assigned Mediator on the MMM Portal.

The date upon which the Debtor shall have completed its obligations under this Section IX(A)(1) as evidenced on the MMM Portal shall be referred to herein as 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 the Mediator’s fee, Debtor shall pay \$300.00 (one-half of the applicable \$600.00 Mediator’s fee) directly to the assigned Mediator.
- 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 counsel (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 perfect Debtor's 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 perfect Debtor's Completed Package shall 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 shall 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 shall on the MMM Portal:
  - a. Acknowledge receipt of the Completed Package; and
  - b. Designate its single point of contact and Arizona legal counsel (if any).
4. Lender's designated single point of contact and Arizona legal counsel 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 Completed Package pursuant to Section IX(A)(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 Completed Package shall be deemed complete.
6. Lender shall 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.
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 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)(5) of these procedures.

C. Mediator Requirements Following Entry of Referral Order

1. Within seven (7) days after Debtor identifies the assigned Mediator on the MMM Portal, the Mediator shall:
  - 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 shall schedule the initial MMM conference to take place within ninety (90) days after entry of the Referral Order. 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 shall fix a reasonable time and place for the MMM conferences.

- c. The 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. The 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. A Debtor represented by an attorney may participate in the MMM conference by telephone provided that the Debtor is physically present with Debtor’s attorney.
  - 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, except that the Debtor may appear telephonically in the Mediator’s sole discretion if the Mediator has a designated surrogate who can physically confirm the identification of the self-represented Debtor.
  - 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 appear telephonically at all MMM conferences.
- D. Additional Parties – Any Additional Party represented by an attorney may participate in the MMM conference by telephone if physically present with the attorney and provides 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 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 the Mediator. In

the event the parties are unable to reach an agreement, the 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 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, 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 the 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. The Chapter 13 Trustee 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 the 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 the Mediator files the Interim Report with the Court:
    - a. Debtor shall file a Motion to Approve Trial Loan Modification Agreement (MMM Form 9).
    - b. Debtor shall lodge with the Court an Order Approving Trial Loan Modification Agreement (MMM Form 10).
    - c. Once entered by the Court, Debtor shall serve a copy of such 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 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 the 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 the Mediator files the Final Report with the Court:
    - a. Debtor shall file a Motion to Approve Final Loan Modification Agreement (MMM Form 11).
      - i. If Debtor is represented by an attorney, this Motion may be filed *ex parte*. Debtor shall concurrently lodge with the Court an Order Approving Final Loan Modification Agreement (MMM Form 13).
      - ii. If Debtor is not represented by an attorney, this Motion must be noticed, served, and set for a 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 Chapter 13 Trustee, and file a certificate of service demonstrating these parties were properly served.
  3. 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.
- 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 shall upload to the MMM Portal and file with the Court the Final Report.
  2. Within twenty-eight (28) days after the Mediator files the Final Report 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 13 Procedures**

- A. Referral to MMM Program Prior to 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 in conjunction 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 the Lender participating in the MMM Program and omit any specific payment amount to the 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. 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.
  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 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 the Lender participating in the MMM Program and omit any specific payment amount to the 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. 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. 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 a trial loan modification, 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. A final loan modification is documented, 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 shall 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 shall retain the Estimated Monthly 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; 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 10); or
    - ii. Debtor has filed a Motion to Approve Final Loan Modification Agreement (MMM Form 11).
2. Estimated Monthly Payments received timely by the 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 the Chapter 13 Plan after the conclusion of the MMM Program shall suspend and revoke any remaining obligations of Trustee to make disbursements pursuant to an Order Approving Trial Loan Modification Agreement (MMM Form 10) or Order Approving Final Loan Modification Agreement (MMM Form 13).
- 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 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 (MMM Form 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, 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 the guidelines and shall 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 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. During the pendency of the MMM Program, any party seeking relief from the automatic stay prior to the conclusion of the MMM Program shall, in a motion filed, served, and noticed for, 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.

#### **XV. Mediator Procedures, Compensation, and Responsibilities**

- A. Court Approval of Mediators – In the first year of this program the Court shall approve Mediators based on availability and in a number determined in the sole discretion of the Court. In subsequent years, 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 XV(B) of these procedures. Selected Mediators will be listed in the Court’s Registry of Mediators pursuant to Section XV(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 1<sup>st</sup> 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 the Mediator and provide access to Debtor’s submissions on the MMM Portal. 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, a mediator 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 either:
      - 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 office of the United States Trustee with at least five (5) years of service as a panel trustee in Arizona; or
      - iv. A Mediator previously approved under MMM Procedures promulgated by a United States Bankruptcy Court in another district.
  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. In the first year of the MMM Program, applications may be submitted and approved at any time. For subsequent years, applications shall be filed no later than November 1<sup>st</sup> 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.<sup>1</sup>

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.
  - 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 the 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 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 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, a Mediator is unable to serve in an assigned case, the 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 a 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

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<sup>1</sup> Available online at:

[http://www.americanbar.org/content/dam/aba/migrated/2011\\_build/dispute\\_resolution/model\\_standards\\_conduct\\_april2007.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/migrated/2011_build/dispute_resolution/model_standards_conduct_april2007.authcheckdam.pdf)).

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 the 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 a 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 the 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 a 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 the parties to the MMM conference.
1. Unless otherwise agreed by the parties and the Mediator:
    - a. Debtor and Lender shall 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 shall be divided equally between the parties.
  - i. Payment shall be made by the parties 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 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 shall be paid as soon as possible, or within 2 business days following conclusion of the final session.

G. Duration of MMM Program – The Mediator shall 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 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 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 shall 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 shall 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; and
14. Request and appear at a status hearing in the event that 150 days passes without acceptance or denial of a loan modification (trial or final).

**XVI. Responsibilities and Compensation of Debtor's Counsel**

- 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 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 (MMM Form 2);

7. 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;
8. 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;
9. Prepare and upload the Referral Order (MMM Form 3);
10. Serve the Referral Order on all Required Parties, including the Mediator and the Chapter 13 Trustee, and satisfy the additional requirements of Section VI(A)(6)(b) of these procedures if applicable;
11. File a Certificate of Service with the Court evidencing the parties were properly served with the Referral Order, as required under Section VI(A)(6)(b) if applicable;
12. Ensure all Mediator fees due from the Debtor 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 (MMM Form 9) and upload an Order Approving Trial Loan Modification Agreement (MMM Form 10) (if a trial loan modification agreement is reached);
16. Prepare, file, and serve a Motion to Approve Final Loan Modification Agreement (MMM Form 11 and MMM Form 12) and upload an Order Approving Final Loan Modification Agreement (MMM Form 13) (if a final loan modification agreement is reached);
17. Review all modified loan documents;
18. Prepare and file all other pleadings required herein 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. MMM Program Attorney Compensation**

1. Attorney for Debtor shall be permitted to charge no more than \$1,750.00 in attorney's fees and \$100.00 in costs for participation in the MMM Program. In the event the attorney pays the MMM costs required to be paid by Debtor, the attorney is permitted to seek reimbursement of those costs in addition to the \$100.00 in costs listed above.
2. Attorney for the Debtor may file an Application for Mortgage Modification Mediation Compensation and Reimbursement of Mortgage Modification Mediation Expenses (the "Fee Application") (MMM Form 23), which shall be supported by a Declaration certifying that the applicable requirements of Section XVI(A) have been satisfied. Debtor's counsel shall simultaneously lodge a form of Order Approving Application for MMM Compensation and Reimbursement of MMM Expenses (MMM Form 24) with the Court, to be paid MMM Program fees and costs through the Chapter 13 Trustee upon completion of the requirements set forth in subsections (a) and (b) below:
  - a. The sum of \$1,250.00 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 XVI(A)(1-14) of these procedures. These fees shall 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 shall become payable upon completion of the services outlined in Section XVI(A)(15)-(19) of these procedures.
3. All fees 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. These fees will become payable in the ordinary course of Chapter 13 Trustee disbursements upon (i) the Mediator scheduling the initial MMM conference under Section IX(C)(2) of these procedures; (ii) entry of an Order approving the fee application; and (iii) the attorney for the Debtor serving the Order approving the fee application on the Chapter 13 Trustee.

**XVII. Monitoring and Status Conferences**

- A. The Mediator and Required Parties shall 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 (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 Chapter 13 Trustee may request a status hearing and bring the following issues before the Court:
1. Failure to file a Motion for Referral 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:
    - 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 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.