

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
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In re)
)
ADMINISTRATIVE ORDER) Administrative Order
PRESCRIBING PROCEDURES FOR) FLMB-2019-6
MORTGAGE MODIFICATION)
MEDIATION)
_____)

SIXTH AMENDED¹
ADMINISTRATIVE ORDER
PRESCRIBING PROCEDURES
FOR MORTGAGE MODIFICATION MEDIATION

The Bankruptcy Court for the Middle District of Florida has adopted the following uniform mortgage modification mediation (“MMM”) procedures throughout the District. All parties participating in the Court’s MMM process in the Middle District of Florida shall comply with these procedures. Accordingly, it is

ORDERED:

1. MMM is available in all cases and for any real property.
2. A motion seeking MMM shall include, **on the first page**, a complete address of the property and the last four digits of the mortgage loan number. If not included, the Court will abate the motion until an amended motion containing the required information is filed.
3. Negative notice is not required for a motion seeking MMM; however, lenders may seek reconsideration for cause within 14 days of entry of an order directing MMM.

¹ This Administrative Order revises Administrative Order No. FLMB-2018-3, *Fifth Amended Administrative Order Prescribing Procedures for Mortgage Modification Mediation*, to update the information in paragraph 5 regarding the use of a secure portal.

4. A motion seeking MMM shall be filed within 90 days of the filing or conversion to a Chapter 12 or Chapter 13 case. The Court will prepare and enter an order directing MMM on timely filed motions. If a motion is not timely filed, the Court may set a hearing and will grant the request only if good cause is demonstrated for the delay.

5. The parties shall use a secure portal (the “Portal”) (e.g., <https://dclmwp.com/Home>) for submission of documents to initiate the MMM and follow the guidelines in the Court’s order directing MMM entered in each individual case.

6. The parties may communicate outside the Portal orally, but all written communication shall occur through the Portal.

7. The parties shall conclude the MMM process within 150 days of the filing or conversion of the case, unless that time is enlarged by written consent on the Portal, by stipulation of the parties, or by Court order.

8. Within 14 days after the entry of the order directing MMM, the parties shall jointly select a mediator qualified under Administrative Order FLMB-2015-5. If the parties cannot agree on a mediator, the debtor shall select a mediator, and the lender may file an objection within seven days. If a timely objection to a mediator is filed, the Chapter 12 or Chapter 13 trustee, or the Clerk in a Chapter 7 or Chapter 11 case, will select the mediator.

9. The debtor and the lender each shall pay \$250.00 directly to the mediator within 14 days of designating the mediator. The parties also shall equally pay the mediator for any additional hourly fees incurred in MMM conferences that extend beyond two, one-hour sessions. The mediator shall file a report within seven days of the conclusion of the mediation conference indicating the current status of the mediation. If a mediator fails to comply with this reporting requirement, upon motion, notice, and hearing, the Court may order a mediator to disgorge mediation fees and the

mediator's removal from the Registered Mediation Panel. The mediator is not required to commence work until payment of \$500.00 is received, but if the parties settle before the payment due date, the mediator shall not be entitled to a fee.

10. The parties may submit a proposed order simultaneously with a motion seeking approval of a *temporary* MMM agreement without need of negative notice or hearing.

11. Using the Court's negative notice procedures, the debtor shall file a motion to approve a *permanent* mortgage modification. The motion must contain the agreed terms of the modification, the new mortgage payments, and the lender's mailing address.

12. Orders approving a permanent MMM agreement (i) shall be in a format that can be recorded in the public records of the county where the property is located, and (ii) should be recorded by the debtor within 90 days of the entry of the order, unless the parties agree otherwise.

13. In Chapter 12 and Chapter 13 cases, debtors seeking MMM shall provide adequate protection to the lenders through payments made to the Chapter 12 or Chapter 13 trustee. For *homestead* properties, the debtor shall pay the lesser of (a) 31% of their gross disposable income (after deducting homeowner's association fees), or (b) the normal monthly contractual mortgage payment. For *non-homestead* income-producing property, the debtor shall pay 75% of the gross rental income generated by the property. The Chapter 12 or Chapter 13 trustee shall disburse these adequate protection payments to the lender unless the Court orders or the parties file a written stipulation otherwise. In all other chapters, the debtor shall make the trial payments directly to the lender as agreed between the parties and without requiring Court approval or any modification of the automatic stay.

14. If a debtor in a Chapter 12 or Chapter 13 case is successful in obtaining a mortgage modification at any time during the case, payments on the modified mortgage shall be paid through the Chapter 12 or Chapter 13 Plan.

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

16. MMM is deemed concluded upon the earliest of: (a) the filing of report of conclusion by the mediator; (b) an order approving a temporary or permanent payment plan; or (c) other order of the Court indicating the MMM concluded. Upon conclusion of the MMM, any payments not yet disbursed to the lender by the Chapter 12 or Chapter 13 trustee shall be disbursed as follows:

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

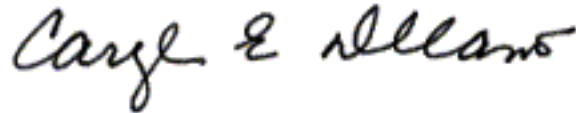
17. Notwithstanding the foregoing, if a Chapter 12 or 13 case is dismissed or converted to a Chapter 7 or Chapter 11 case, the Chapter 12 or Chapter 13 trustee shall disburse any funds remaining in the trustee's possession to the debtor or, if the debtor is represented by an attorney, to the debtor in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

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

19. The MMM procedures do not affect amounts of allowed attorney's fees for debtors' and lenders' attorneys participating in the MMM program. Divisional practices and limitations on such fees still control.

20. The debtor's attorney should collect monies from the debtor to pay the MMM mediator before filing a motion seeking mediation.

DATED: December 20, 2019.

A handwritten signature in black ink, reading "Caryl E. Delano". The signature is written in a cursive, flowing style.

CARYL E. DELANO
Chief United States Bankruptcy Judge