

CHAPTER 13 MORTGAGE MODIFICATION MEDIATION PROGRAM (MMM)

The Chapter 13 Mortgage Modification Mediation Program (MMM) is a new program in the U.S. Bankruptcy Court for the Eastern District of Wisconsin to help qualified Chapter 13 debtors keep their homes. MMM is designed for Chapter 13 debtors who cannot afford their current mortgage payment, but have steady income to pay a modified mortgage payment. MMM sets up an informal meeting between the debtor and the lender conducted by a neutral mediator who acts as a discussion facilitator. The mediator cannot force a lender to modify a mortgage, but can help the debtor and the lender reach an agreement. MMM is a way for the debtor and lender to discuss whether modifying the mortgage is possible. The goal of MMM is for the debtor and lender to agree to a permanent mortgage modification.

MMM is a voluntary program, and MMM has the support of the Bankruptcy Court. The Judges encourage qualified Chapter 13 debtors and lenders to try the program. MMM has been designed with protections for debtors and lenders alike.

To start the process, the debtor files a Motion to Participate in MMM and serves a copy on the lender. The lender has 21 days to respond to the Motion. The Motion states the requirements to qualify for MMM, including:

- Debtor has regular income and is the owner occupant of a residential property used as debtor's primary residence (investment properties do not qualify).
- Debtor has a mortgage balance of less than \$729,750, and the mortgage payment is not affordable due to financial hardship.
- Debtor will make monthly post-petition mortgage payments of 31% of debtor's gross monthly income or 75% of the Debtor's current mortgage payment, whichever is less, starting the next monthly scheduled due date (plus any grace period) after the Motion is filed. Debtor agrees to a "Doomsday Provision" so that if debtor misses one of these modified mortgage payments, the automatic stay is lifted without a hearing.
- Debtor must have filed complete bankruptcy schedules, and must supply lender with last 2 years' signed tax returns, last 60 days' pay advices, and any other documents lender requests. No mediation will be scheduled until all documents are provided, and failure to supply the documents is grounds for dismissal from the program.
- Debtor must pay a mediation fee of \$125 to the mediator and attend the mediation session. This fee is not refundable under any circumstances. The mediation is to be completed within 60 days of the appointment of the mediator.
- If MMM is successful and the mortgage is modified, the debtor agrees not to voluntarily dismiss the Chapter 13 bankruptcy for 9 months, to enable the debtor to establish a track record of paying the modified mortgage payments. Also, the debtor agrees to a "Doomsday Provision" for one year so that if the debtor misses a modified mortgage payment, the automatic stay may be lifted without a hearing.

- If MMM is not successful, the debtor agrees that either the automatic stay will be lifted or the debtor will promptly propose an amended Chapter 13 plan to pay the original mortgage.

Mortgage lenders participating in MMM will also pay \$125 to the mediator. By consenting to MMM, the lender agrees that a representative with settlement authority will participate in the mediation sessions by telephone or video conference and that the lender will act promptly and in good faith to consider a permanent modification. If the MMM is successful, the lender will promptly prepare the necessary documents, and the Court will approve any modification agreed upon by the debtor and lender.

By participating in MMM, the lender and debtor agree to entry of a Mortgage Modification Mediation Order. This is only a summary. Debtors and lenders are encouraged to read the terms of the Motion, Consent and Order to familiarize themselves with the terms of the program.

Questions about MMM can be directed to Mr. Sean McDermott in the office of the Clerk, U.S. Bankruptcy Court at 414-297-3291.



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Mortgage Modification Mediation Program

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In April 2011, the judges of the U.S. Bankruptcy Court for the Eastern District of Wisconsin announced the implementation of a mortgage modification mediation program. The program was created with the assistance of a committee comprised of the chapter 13 trustees, local attorneys representing both debtors and creditors, and a local mediation coordinator. The program is designed to help chapter 13 debtors who wish to modify their residential mortgages, cut through any proverbial "red tape," and obtain an answer from a mortgage servicer as to whether a modification is feasible. The program is purely voluntary. The highlights of the program are as follows:

- The program is available only for chapter 13 debtors with unaffordable mortgages on their residences.
- The automatic stay is modified to the extent necessary to allow the parties to negotiate a loan modification and the parties are directed to engage in mediation in good faith.
- The debtor files a motion at the inception of the bankruptcy case seeking to participate in the mediation program and agreeing to the program's terms.
- The lender has 21 days after the debtor's motion to consent or object to its participation in the mediation program. Given the "doomsday" provision with respect to the monthly payments and the expedited nature of the process, the judges are hopeful that the lenders will freely agree to participate.
- If the lender consents, the debtor must provide tax returns, pay advices, and other documents requested by the lender. The lender is encouraged to use the information in the debtor's bankruptcy schedules as much as possible to expedite the mediation process. Once the documents are provided to the lender, the debtor certifies that the case is ready for mediation, and a mediator is appointed from a panel maintained by the court.
- Until a modification is approved or denied, the debtor must make adequate protection mortgage payments to the servicer of the lesser of 31 percent of the debtor's gross monthly income or 75 percent of the current mortgage payment. If any such payment is missed, the lender may file an affidavit of default, and the automatic stay is then lifted without any further hearing.
- The debtor and the lender each pay a nonrefundable \$125 fee to the mediator. The mediation session will then be scheduled by the mediator and held at the bankruptcy court in Milwaukee. The lender's representative must be involved continuously throughout the mediation and may appear by telephone or video conference. The lender's representative must have full authority to approve a permanent modification.
- The mediation sessions may include the negotiation of a modification of a loan (whether by new payment terms, reduction or forgiveness of principal, interest, escrow shortage, or advances), the surrender or short sale of the property, or otherwise. Disputes concerning the amount of the lender's claim, application of payments, other loan accounting issues, and standing of the lender to seek the foreclosure of the mortgage are expressly excluded from the mediation program.
- The mediation must be completed within 60 days after the appointment of the mediator or the court will schedule a status conference. If the parties agree to a modification, the modified monthly mortgage payments to the lender will be subject to a "doomsday" order for the first 12 months. Additionally, the debtor agrees to not voluntarily dismiss the chapter 13 case for nine months in order to establish a track record. If the mediation is not successful, the court can then either lift the stay or provide the debtor with a short period of time to propose a traditional chapter 13 plan to cure the mortgage arrears.
- All statements made by the parties and their attorneys are privileged and will not be made known to the court or construed for any purpose as an admission.

Because the debtor must elect to participate in the program at the inception of the bankruptcy case and as the procedure is to be expedited as much as possible, it is hoped that mortgages can be either modified very early in the bankruptcy process, thereby eliminating costly legal proceedings later related to motions for relief, objections to claims, plan confirmation, and the like. Failing that, the debtor can propose a conventional chapter 13 plan to address the pre-petition arrearage before getting too far into the chapter 13 case.

The specifics of the mediation program can be found under the "Information for Attorneys" tab at the court's website (www.wieb.uscourts.gov).

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