

Orlando Division
Bankruptcy Mortgage Modification Mediation Program

The Orlando Division of the United States Bankruptcy Court is pleased to announce the establishment of a mediation program for mortgage modifications in Chapter 13 cases.

The new program allows parties to discuss mortgage modification in an informal setting as well as to provide a “fast track” for both the debtors and lenders. The mediations are for negotiation purposes only, and neither the debtors nor the lenders are required to enter into any agreement. The Bankruptcy Court will not force any modification and will make no adjudication, except with the consent of both parties. Common issues to negotiate include a reduced interest rate (either temporary or permanent), moving payment for mortgage arrears to the end of the loan, and, in some instances, reducing principal. Any or all of these outcomes are possible and will greatly improve the success of a Chapter 13 plan.

The program is streamlined to reduce costs, save considerable time, and make it easier for the parties to facilitate a loan modification. The Court has emulated the Loan Modification Mediation Program being offered by the Orange County Bar, which has been successfully organizing mediations in state court for a number of years. The program uses experienced attorneys to act as mediators and who charge a reduced fee of \$385 for two hours of their services. Chapter 13 debtors who would like to use this program simply file a motion. The Bankruptcy Court then enters an order without a hearing requiring the parties mediate within 60 days. You may get a copy of a sample motion requesting mediation and the resulting order on the Court’s website: www.flmb.uscourts.gov.

Certain pre-requisites are necessary before the debtors can ask for mediation:

- The debtors and debtors’ counsel, if any, must determine if a mortgage modification is feasible. Lenders generally require debtors to devote 31 percent of their gross income to repayment of any modified mortgage, which would include principal + interest (currently around five percent) + taxes + insurance. If the Chapter 13 debtors can make these new reduced payments, they can request mediation. If the debtors do not earn sufficient income, mediation is not a viable option.
- The debtors must pay \$385 to the Chapter 13 Trustee *before* the mediation session.

Once mediation is ordered, the parties will agree on a mediator from either the approved list of mediators provided through the individual county bar associations or those approved by the Bankruptcy Court. If a mediator cannot be agreed upon, the Court may pick one.

Also, once mediation is ordered, debtors’ counsel must provide certain financial information concerning the debtor and any other co-debtor on the loan. The lender and lender’s counsel must receive this financial information at least ten days prior to mediation. Lenders typically ask for prior tax returns, current pay stubs, and information contained in Schedules I and J, all of which debtors’ counsel should have in his or her possession. As a precaution, debtors should take an extra copy of this information to the mediation, just in case.

In an incentive to allow large national lenders to modify home mortgages and to save costs, the lender and their counsel are permitted to appear at the mediation by telephone. Counsel for the lender is allowed \$300 in fees for representing the lender in the mediation, which is payable either through the modified mortgage or through the debtors' Chapter 13 plan. Each lender must send a mortgage modification specialist with full settlement authority to the mediation. Please note that, while representatives may have full authority to settle, they must follow the guidelines promulgated by the lender, and if the numbers do not fit into those guidelines, a modification is unlikely.

The statements made at mediation are not admissible in Court. The bankruptcy judge will only be told if the case settles or if an impasse is reached, nothing further. The parties may continue or suspend the mediation to discuss other options or if the mediator suggests a "time-out." Any signed agreement reached at mediation still must be approved by the Bankruptcy Court before it is binding and enforceable. In many instances, debtors also will need to modify their Chapter 13 plan.

Remember, keep an open mind. Mediation is nothing more than a means to an end. The parties are not required to settle, and a large majority of mediations end in an impasse. If mediation is successful, the debtors should immediately see positive results. They may reduce their mortgage payments and their Chapter 13 plan payments. Even a short-term modification could have immediate results.

Finally, debtors need to keep in mind that keeping a home worth far less than the mortgage debt may not be financially prudent. Sometimes surrendering a home is a debtors' best option. Further, any arrears added to the end of the loan in a mortgage modification acts to increase their principal and indebtedness, which could make the modified loan a bad financial decision. Debtors should seek legal and financial advice before modifying their mortgage in order to make an informed decision. Act wisely.