

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

ORDER ESTABLISHING LOSS MITIGATION)
PROGRAM PROCEDURES FOR CHAPTER 13 CASES) GENERAL ORDER 14-0002
ASSIGNED TO JUDGE LORCH IN THE)
NEW ALBANY DIVISION)

**ORDER ESTABLISHING LOSS MITIGATION MEDIATION PROGRAM
FOR CHAPTER 13 CASES IN THE NEW ALBANY DIVISION**

In an effort to facilitate consensual resolutions between lenders and individual debtors whose residence is at risk of loss, to avoid the costs of litigation, and to facilitate the effective reorganization of the affairs of debtors in bankruptcy, the Court hereby establishes a loss mitigation program available to debtors in chapter 13 cases assigned to Judge Lorch in the New Albany Division. This General Order is effective on February 10, 2014, and supersedes the alternative dispute resolution procedures found in Local Rule B-9019-2.

1. A debtor in a chapter 13 case may seek a referral to loss mitigation mediation in an effort to obtain a modification of a mortgage encumbering his or her primary residence.
2. Before filing a motion to direct loss mitigation, a debtor shall:
 - a. propose a chapter 13 plan which provides for (i) adequate protection payments to be made through the trustee conduit, and (ii) the payment of an administrative expense for the mediator's fee as set forth below;
 - b. deliver to the chapter 13 trustee \$385 as payment to a loss mitigation mediator, in addition to regular plan payments;
 - c. prepare, with the assistance of the debtor's attorney, the loan modification forms ("the Debtor's Prepared Package") provided by Default Mitigation Management LLC ("the LMM Portal");¹
 - d. provide to the debtor's attorney all of the required supporting documentation for the Debtor's Prepared Package; and
 - e. have paid the case filing fee in full.
3. A motion to direct loss mitigation mediation shall:
 - a. include a notice of the objection deadline set by this General Order;

¹ It is within the Court's discretion to approve the use of other portals in the future.

- b. contain either (i) a designation of a mediator experienced with the loss mitigation process who has expressed to the debtor a willingness to accept an appointment on the terms described herein, or (ii) a request that the Court appoint a mediator;
 - c. be filed not less than ninety days after the debtor filed the chapter 13 plan (whether original, amended, or modified) as set forth in paragraph 2 above, unless otherwise ordered by the Court;
 - d. include statements that the requirements of paragraph 2 have been satisfied; and
 - e. include or be followed by a certificate of service that complies with Local Rule B-9013-2 and also shows service of the motion and notice on the mediator.
4. If, at the time a debtor files a motion to direct mediation no attorney has entered an appearance in the debtor's case on behalf of the mortgage lender, the motion shall be served on the debtor's mortgage lender pursuant to Fed. R. Bankr. P. 7004.
5. A mortgage lender shall have fourteen days from the date of service of a motion to direct mediation to object. In the absence of an objection, the Court may issue an order directing mediation without conducting a hearing on the debtor's motion.
6. Upon the entry of an order directing mediation, all communication between the parties shall be sent through the LMM Portal.
7. Upon the entry of an order directing mediation, the automatic stay will be modified to the extent necessary to facilitate the loss mitigation process. Specifically, any pending motion for stay relief with respect to property that is subject to mediation pursuant to this order shall be continued pursuant to 11 U.S.C. § 362(e) until after the conclusion of the mediation. Nevertheless, any mortgage lender may, prior to the conclusion of the mediation, move for a hearing on a pending motion for stay relief or move for stay relief based on exigent circumstances set forth in its motion.
8. A mortgage lender who is a party to mediation pursuant to this order shall, within fourteen days after entry of an order directing mediation:
 - a. register to use the LMM Portal and ensure that the LMM Portal operator has been provided with any and all application forms and documentation requirements which are to be posted on the LMM Portal;
 - b. designate a representative to participate in the mediation who has full settlement authority; and
 - c. advise the debtor of the loan modification programs for which the debtor may be eligible.
9. The debtor shall, within seven days after the entry of the order directing mediation or notice of the mortgage lender's registration on the LMM portal:

- a. upload the Debtor's Prepared Package to the LMM Portal;
 - b. upload a copy of the Court's order directing mediation to the LMM Portal;
 - c. upload any additional lender-specific information to the LMM Portal;
 - d. designate and assign the mediator to the case on the LMM Portal; and
 - e. remit any required fees to the LMM Portal.
10. The mortgage lender shall, within fourteen days after the attorney for the debtor has submitted the Debtor's Prepared Package and any additional required documentation to the LMM Portal:
 - a. acknowledge receipt of the information;
 - b. report the mortgage lender's designated counsel for the mediation, if any;
 - c. notify the attorney for the debtor of any additional or updated information required to process the application; and
 - d. provide the mediator with a copy of any applicable settlement guidelines.
11. The mediator appointed by the order directing mediation shall, within twenty-one days after that order, register with the LMM Portal.
12. Mediation pursuant to this order shall commence within sixty days after the entry of an order directing mediation. The mediation session may be continued once for up to sixty days without obtaining approval of the Court. Additional continuances may be granted only upon written motion and only for cause.
13. The mediation session shall be conducted via telephone on a conference call established by the debtor. The debtor shall publish the phone number to the LMM Portal not later than seven days before the first scheduled mediation.
14. The debtor and any co-obligor shall participate in each mediation session.
15. The mediator or the debtor's attorney shall, within seven days after the conclusion of mediation pursuant to this order, file with the Court a report of settlement or impasse. This document shall be filed electronically. (Mediators can find instructions for obtaining rights to file electronically on the Court's website.)
16. The debtor shall, within twenty-one days after the conclusion of mediation pursuant to this order, file:
 - a. a motion to approve a loss mitigation agreement which sets forth the terms of a trial mortgage modification, or

- b. a motion to modify the chapter 13 plan which provides for (i) the surrender of the real estate in question or (ii) the cure of any mortgage arrearage pursuant to 11 U.S.C. § 1322(b)(3) and the conduit payment of continuing mortgage payments.
17. If either party to a mediation fails to negotiate in good faith or to appear for a scheduled mediation, it may be held in contempt and made to pay sanctions. A mortgage lender is presumed to act in good faith if it considers the information submitted by a debtor under applicable pre-established guidelines, such as HAMP, the National Mortgage Settlement, HAFA, FHA loss mitigation regulations, and the guidelines and rules of the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation.
18. If a mortgage lender transfers the debtor's loan after an order directing mediation is entered, it must provide a copy of that order to the new holder of the loan, who shall be bound by its terms.
19. The Court will allow a mediator appointed pursuant to this order a fee in the amount of \$385 for up to two hours of mediation, to be paid through the trustee conduit without the necessity of the mediator having to obtain separate authorization to be employed by a debtor's bankruptcy estate and without having to file an application for compensation.
20. An attorney for a debtor who seeks mediation under this order shall be entitled to additional compensation as shall be determined by the Court. Counsel for the debtor must seek approval of such compensation by separate application pursuant to Fed. R. Bankr. P. 2016 and Local Rule S.D. Ind. B-2016-1(b)(4).
21. If the mortgage lender chooses to be represented by counsel at the mediation, the mortgage lender may be allowed an administrative claim for \$300 upon the filing of a proof of claim after that mediation.
22. All communication and information exchanged during the loss mitigation mediation process shall remain confidential and shall be inadmissible in any subsequent proceeding.

IT IS SO ORDERED.

/s/ Basil H. Lorch III
Basil H. Lorch III, Judge