

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

**NOTICE OF PROPOSED EXPANSION OF
MORTGAGE LOSS MITIGATION MEDIATION PROCEDURE
TO ALL DIVISIONS**

The Bankruptcy Judges are proposing to expand the mortgage loss mitigation mediation procedure, used in the New Albany Division, pursuant to General Order 14-0002, to all Divisions effective February 1, 2016. The Bankruptcy Judges intend to issue a new general order for that expansion. (Use of a general order rather than a local rule allows for easier modification, and is the method for adoption of such procedures used by most courts.)

Use of the mortgage loss mitigation mediation procedure in New Albany revealed a few flaws in the process and in General Order 14-0002. Therefore, the general order that would be put into place will be slightly different. A redlined version of the proposed new general order is attached to this notice. (To simplify viewing, changes to paragraph numbers are not shown.)

Because of the changes to the existing general order, the Judges invite comments from the bar prior to the order's execution. Comments can be made by sending an email to Local_Rules_Comments@insb.uscourts.gov. Comments are due by January 15, 2016.

December 17, 2015

/s/ Kevin P. Dempsey
Bankruptcy Clerk

DRAFT

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA

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| ORDER ESTABLISHING LOSS MITIGATION |) | GENERAL ORDER 16-_____ |
| PROGRAM PROCEDURES FOR CHAPTER 13 CASES |) | REPLACES GENERAL ORDER: 14-0002 |
| IN THE NEW ALBANY DIVISION |) | |

**ORDER ESTABLISHING LOSS MITIGATION MEDIATION PROGRAM
FOR CHAPTER 13 CASES**

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 in the New Albany Division~~. This General Order is effective on ~~February 10, 2014~~ **February 1, 2016** and supersedes the alternative dispute resolution procedures found in Local Rule B-9019-2. **This General Order also replaces General Order 14-0002.**

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. **If a debtor seeks loss mitigation mediation on more than one mortgage, the debtor shall be required to conclude the loss mitigation of the first mortgage before concluding the loss mitigation on the second or subsequent mortgages.**
3. 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~~

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

- e. have paid the case filing fee in full; and
 - f. have filed any adversary proceeding seeking to strip a second or subsequent mortgage, if necessary.
4. A motion to direct loss mitigation mediation shall:
 - a. include a notice of the objection deadline set by this General Order;
 - 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 more less than ninety one-hundred twenty days after the debtor filed the chapter 13 plan (whether original, amended, or modified) as set forth in paragraph 3 above, unless otherwise ordered by the Court;
 - d. include statements that the requirements of paragraph 3 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.
5. Any mediator serving pursuant to this order shall file all documents with the Court electronically. (Mediators can find instructions for obtaining rights to file electronically on the Court's website.)
6. 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.
7. 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.
8. Upon the entry of an order directing mediation, all communication between the parties shall be sent through the LMM Portal.
9. 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.

10. 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.

11. 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.

12. 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.

13. The mediator appointed by the order directing mediation shall, within twenty-one days after that order, register with the LMM Portal.

13. 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. **The mediator shall file an Interim Report with the Court to inform all parties of the continuation of the mediation.** Additional continuances may be granted only upon written motion and only for cause.

14. 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.
15. The debtor and any co-obligor shall participate in each mediation session.
16. 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.)~~
17. The debtor shall **notify the Trustee within 3 days after the conclusion of the mediation of the terms of any settlement agreement.**
18. **The debtor shall**, within twenty-one days after the conclusion of mediation pursuant to this order, file **with the court**:
 - a. a motion to approve a loss mitigation agreement which sets forth **in the motion itself** 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.
19. 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.
20. 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.
21. **If the loss mitigation mediation process has not progressed for more than 60 days, any party may file a motion to terminate loss mitigation mediation and the court shall set a hearing on the motion to terminate, unless the other party to the mediation files a notice of consent to the termination.**
22. **If the Court's docket contains no updated information on the loss mitigation mediation process for more than 60 days, the Trustee may request a status conference to determine the progress of the loss mitigation mediation. In response to the request, the mediator may file an Interim Report, and the trustee may then withdraw his or her request.**
23. 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.

24. 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).

25. 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.

26. 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/ _____
Robyn L. Moberly, Chief Judge