

Mortgage Modification Mediation

The United States Bankruptcy Court for the Northern District of Florida 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 the 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 the 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 and the U.S. Bankruptcy Court for the Middle District of Florida, Orlando Division, which has been successfully organizing mediations for a number of years. The program uses experienced mediators who charge a reduced fee of \$385.00 for two hours of their services. Chapter 13 debtors who would like to use this program simply file a Motion for Referral to Mortgage Modification Mediation using Local Form **13-38** or **13-38-PS**. The Bankruptcy Court then enters an **order** requiring the parties mediate within 60 days. A hearing on the motion is not required. (NOTE: Please review the sample **Duties of the Debtor Order** for more information relating to this program.)

Certain pre-requisites are necessary before the debtor (or debtors) can ask for mediation:

- The debtor and debtor’s counsel, if any, must determine if a mortgage modification is feasible. Lenders generally require debtors to devote 31% of their gross income to repayment of any modified mortgage, which would include principal + interest + taxes + insurance. If the Chapter 13 debtor can make these new reduced payments, they can request mediation. If the debtor does not earn sufficient income, mediation is not a viable option.
- The debtor must pay \$385.00 to the Chapter 13 Trustee before the mediation session.

Once mediation is ordered, the parties will agree on a mediator from the approved list of mediators provided by the Bankruptcy Court. If a mediator cannot be agreed upon, the Court may choose one for you.

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

As an incentive to allow large national lenders to modify home mortgages and to save costs, the lender and their counsel are permitted to participate in the mediation by telephone. Counsel for the lender is allowed \$300.00 in fees for representing the lender in the mediation, which is payable either through the modified mortgage or through the debtor’s 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 not likely.

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 will also 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 see immediate positive results. They may reduce their 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 a mortgage debt may not be financially prudent. Sometimes surrendering a home is the debtor's 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.

Additional Resources:

- List of Court **Approved Mortgage Modification Mediators**
- Application for Admission to Registry of Mediators Qualified Under Florida Northern Mortgage Modification Mediation Program (**Local Form A-9**)
- **Standing Order No. 20 - Guidelines and Procedures for Mortgage Modification Mediators (Qualification Requirements)**
- **Frequently Asked Questions**