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2021 Consumer Practice Extravaganza

Mortgage Mediation in Bankruptcy: How to Make the Mediation Process Successful

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Mortgage Mediation in Bankruptcy: How to make the Mediation Process Successful

2021

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d/b/a Mediate Wisconsin
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Mediation



2021

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Jeffrey Fraser, Esq. Partner, Bankruptcy at Albertelli Law
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Laurie K Weatherford, Chapter 13 Trustee for the Middle
District of Florida, Orlando Division.



2021

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How Can Mediation Fit in a Reorganizational Bankruptcy?

2021

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Chapter 13 plan and code section do not specifically provide for mediation as remedy for Mortgages.

*11 U.S.C. §1322 and 1325 set forth treatment of the plan for secured debt related to houses. If it is debtor's primary residence under 1322 ,the contract rights of the lender cannot be modified and the plan must call for a cure the arrears and maintain current payment treatment.

* If the loan has matured, maturing within the bankruptcy, or not the debtor's primary residence the loan could be subject to the modification provision of 1325.



**If the code does not provide for the mediation process,
how can a mediation program be implemented in
bankruptcy?**

A mediation loss mitigation program must be set up by Local Districts through local rules.



See In Re: Alberto G. Sosa (1/28/11)

Upheld Rhode Island's Loss Mitigation Program –

The court found that the Rhode Island bankruptcy loss mitigation program was consistent with the court's powers under the bankruptcy code finding loss mitigation programs are "a case management tool designed to encourage the resolution of differences between residential mortgage lenders and their borrowers, and to provide a way for them to access the various federal housing programs available outside of bankruptcy...[and] is intended to start a dialogue, giving the parties nothing more than the opportunity to discuss their respective positions."



Mortgage Modification Mediation is a Process

It is important to note that mortgage modification programs impose no requirement to reach any resolution nor provide any rights or remedies not otherwise available to debtors.

These programs do not dictate any specific result. They simply facilitate an orderly and transparent discussion between the parties in an attempt to resolve the mortgage default which is otherwise very difficult to do in general and in bankruptcy in particular.



The Cost of Doing Nothing

Cost-Benefit Analysis of Debtor/Borrower paying to engage in a mortgage modification process versus curing arrearage through the Chapter 13 plan.





This presentation looks at ways to set up a mediation program within your district and how it can be successful.



Where to Start?

Key Components to a Successful Program:

- * A document exchange process.
- * An organizer within the district to get the program off the ground.
- * A roster of trained and experienced mediators.



The Document Exchange Process Is Key for a Successful Mediation Program



The Document Exchange Process

- * A **complete financial package** is the **threshold component** of loss mitigation/mortgage modification review process.
- * The ability to **track documents** requested/received **in real-time** cuts through miscommunication, frustration and wasted time.
- * **Navigating** the loan modification process document requirements can be tedious for borrowers and creditors alike.
- * Secure, online document exchange through **Stretto Default Solutions**, formerly **DMM Loss Mitigation Portal**.





Using the DMM Portal



DMM Portal – Compiling Complete Financial Package

Available feature - **DocUmods**

Described as “TurboTax” for compiling loan mod packages

Debtor’s counsel and debtor may use this tool to complete the package and then upload to the DMM Portal for mortgage servicer to accept and review.

<https://www.documods.com>





DMM Portal – General Features

- * Labels uploaded documents – including loan number, doc name, and date
 - * Tracks steps of process – Application Submitted, Receipt Acknowledged, File Incomplete/Complete, Decision Reported, Application Closed
 - * Logs all messages with date/time stamp & creates a History – generates email notification of messages
 - * Counts down days until program Court Order expires
 - * Contact Information – Attorneys and Servicer Contact
 - * Secure - Compliant with servicer data security requirements
-



DMM Portal – Who Has Access?

Borrower attorney
Default attorney
Mortgage Servicer
Mediator
Trustee



Different Mortgage Modification Mediation Models

- * Stretto/DMM Project Manger Process
- * Locally Administered MMM Process



The Mediator's Role in Mediation Session

- * Mediators can help cut through misunderstandings or oversights with the review of the financials and modification options.
- * Mediators give parties a platform to discuss offers and denials.
- * Mediators can provide clarity of the process for all parties.
- *** **What Mediators can't do** - they cannot help the parties negotiate or craft new terms outside of what's available through the loss mitigation review***



MEDIATION HOW DOES IMPLEMENTATION BEGIN

The Middle District of
Florida's Mediation Program
from Start to Finish: Jeff
Fraser & Laurie Weatherford



Mediation Stats and Cost Benefit Analysis



The Cost of a Mortgage Modification Program

\$2,920

Attorney No Look fee	\$2,500
Program Manager / Mediator fee	\$300
Document preparation fee	\$60
Portal submission fee	\$60

Expected costs based on model court program.



The Cost of Doing Nothing

\$47,522

Out-of-pocket debtor costs (moving, rent, etc.)	\$5,040
Additional mortgage P & I payments	\$42,482

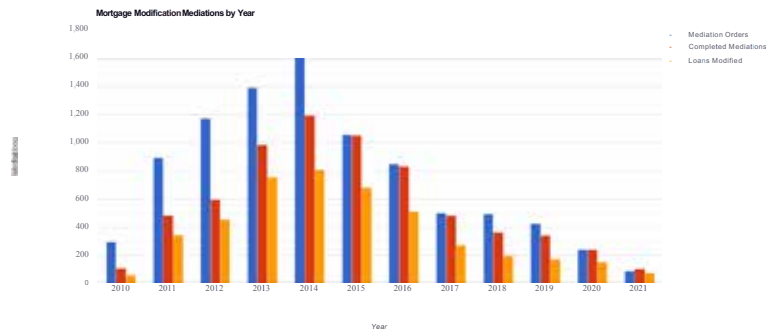
Expected out-of-pocket costs to debtor based on probability of foreclosure avoidance outside of mortgage modification program.



The Cost of Doing Nothing

The debtor can also expect the following additional costs:

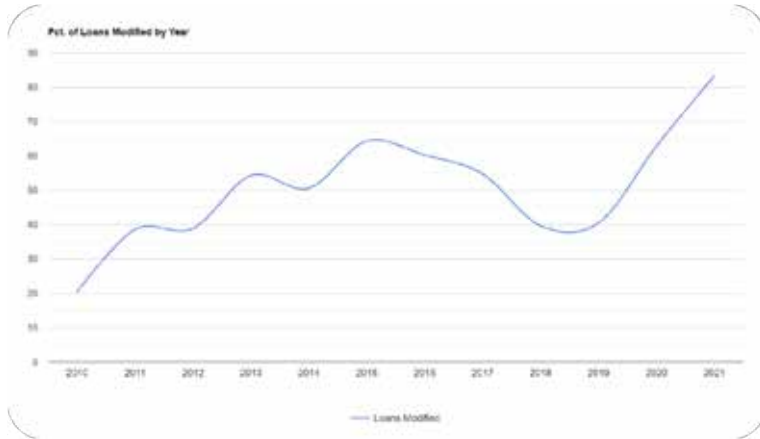
- Higher future borrowing costs:
 - Credit cards – up to 10% higher interest rate
 - Auto loans – up to 10% higher interest rate
 - Mortgages – up to 3% higher interest rate
 - Insurance – double the premiums
 - Rent – higher security deposit
- Displaced family / loss of housing
- Up to 7 years waiting period to secure new mortgage
- Impact on employment



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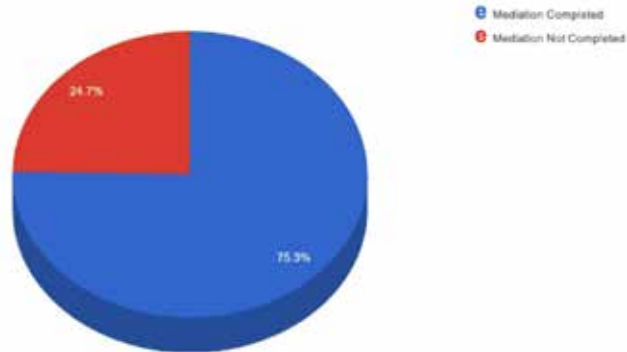
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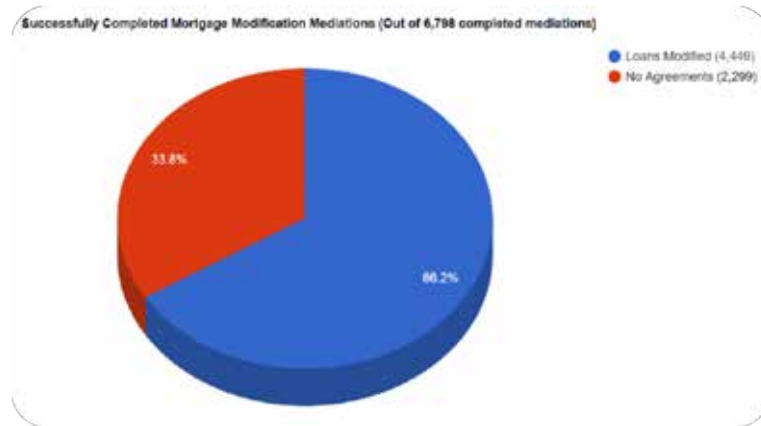


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Total Mortgage Modification Mediations Completed (8,798 out of 9,033 orders)





CHECKS AND BALANCES TO MEDIATION

Role of the Bankruptcy Court in
Mediation:

- Motions to Allow Mediations
- Plan language and Time Frames
- Objections based on Bad Faith





Future Trends that will Impact Bankruptcy and Potential Mediation Start Ups

*Virtual document exchange will continue to grow in many industries including bankruptcy.

*CARES Forbearance default will need to be addressed in the upcoming year.



QUESTIONS ?



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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re

Chapter 13
Case No.:

Debtor.

DEBTOR'S CERTIFICATION OF READINESS FOR MEDIATION

Pursuant to the Notice of Motion and Motion to Participate in Mortgage Modification Mediation Program, the undersigned attorney for the Debtor hereby certifies that all requested documents have been provided to the mortgage creditor via the DMM Loss Mitigation Web Portal, and that this case is ready for appointment of a Mediator.

Date:

Name and Address of Debtor's attorney

WISCONSIN

MORTGAGE MODIFICATION MEDIATION

FOR CHAPTER 13 DEBTORS ONLY

The Mortgage Modification Mediation Program (MMM) is a program designed to help qualified Chapter 13 debtors keep their homes by modifying their mortgage to an affordable payment. To qualify, the debtor must have steady income and pay 31% of gross income or 75% of the current mortgage payment (whichever is less) while the mediation is pending. Requesting mediation will allow debtors and lenders to discuss whether modifying a mortgage loan is feasible. Debtors who are successful may lower their monthly payment amounts and keep their homes.

Mediation is an informal meeting conducted by a neutral mediator (selected at random from a list of qualified mediators) who acts as a discussion facilitator. The mediator cannot force a lender to modify the debtor's mortgage but can help the parties reach an agreement. Mediation is simply a way for debtors and lenders to discuss whether modifying the mortgage is possible.

Qualified debtors who want to use MMM, should complete and file a Notice of Motion and Motion to Participate in Mortgage Modification Mediation Program. Click [here](#) for the required form of Motion. Effective June 15, 2012, Debtors and Mortgage Creditors will use the DMM Loss Mitigation Portal to upload documents and communicate about forms and information required for the mediation. Click [here](#) for a description of the DMM Loss Mitigation Portal and for information about how to register.

Note: The mediation fee is \$400. Debtors and lenders will each need to pay one-half of the fee (\$200 each) to the mediator before attending the scheduled mediation. The Debtor also pays \$60 to use the DMM Loss Mitigation Portal. Prior to filing the motion to participate in the MMM Program, the Debtor will be required to prepare the initial documents using www.documods.com and pay a fee of \$60.

After the Motion is filed, the lender will have 14 days to object to participation in MMM. If no objection is filed a Mortgage Modification Mediation Order will be uploaded by the Clerk. Click [here](#) for the required form of order. Please note: lenders wishing to withdraw from the program must file a motion or objection to do so.

Once all documents have been submitted to the creditor or uploaded to the DMM Portal, the debtor must submit a certification of readiness. The DMM form can be found [here](#).

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Please read the all of the documents so you are familiar with the requirements. For a more detailed description of the program, please click [here](#).

MINIMUM QUALIFICATIONS FOR THE MORTGAGE MODIFICATION MEDIATION PROGRAM

Only Chapter 13 debtors can request mediation

Mediation limited to the debtor's primary residence (investment properties do not qualify)

Debtor has steady income and can pay up to 31% of gross income or 75% of the debtor's current mortgage payment (whichever is less) to the modified mortgage payment

Debtor and the lender must each pay half of a non-refundable \$400 mediation fee (\$200 each) to the appointed mediator before attending the scheduled mediation

Debtor pays \$60 to use the DMM Loss Mitigation Portal to upload required documents and forms

Debtor pays \$60 to prepare initial documents.

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re

Chapter 13

Case No.:

Debtor.

**ORDER DIRECTING PARTIES TO ENGAGE IN
MORTGAGE MODIFICATION MEDIATION
USING DMM PORTAL**

No objections have been filed and sustained to the motion of the above-named debtor(s) (the “Debtor”) to enter the Mortgage Modification Mediation (“MMM”) Program with _____ (the “mortgage creditor”), and IT IS THEREFORE ORDERED:

1. Within 7 days of entry of this Order, the Debtor’s counsel will submit the mortgage creditor’s required loan modification documents (the “Documents”) by filing the Documents with the DMM Loss Mitigation Web Portal (the “Portal”).¹ Counsel for the Debtor will pay directly to the Portal the sum of \$40. The Portal fee is nonrefundable.
2. Upon completion of delivery of the Documents through the Portal, the Debtor will file with the Court a “Certification of Readiness for Mediation.”
3. Promptly after filing of the Certification of Readiness for Mediation, the Clerk will select a mediator from this Court’s list of approved mediators, and notify the parties and the Mediator of the appointment.
4. The mortgage creditor will receive the Documents via the Portal.
5. Promptly after receiving the notice of appointment, the Mediator will contact the parties and schedule the mediation session. The Mediator and the parties may agree

¹ Questions about registration for the Portal or posting of the required Documents can be directed to DMM Support at 1-800-481-1013 or support@defaultmitigation.com.

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to conduct one or more telephone conferences prior to the in-person mediation session and up to two telephone conferences after the in-person mediation session.

6. The mediation session may include the negotiation of a modification of the Debtor's mortgage loan, whether by new payment terms, reduction or forgiveness of principal, interest, escrow shortage, advanced costs (e.g. real estate tax advance), surrender or sale of the mortgaged property or otherwise. Disputes concerning the amount of the mortgage creditor's claim, application of payments, and standing of the mortgage creditor to seek foreclosure are not included in the MMM Program.
7. No later than 14 days after appointment of the Mediator, the Debtor and the mortgage creditor will pay, directly to the Mediator, the sum of \$200 each. The Debtor's personal check will not be accepted, but the Debtor's attorney's check will be acceptable. The mediator is not required to perform any services or analysis until the fee has been received. The mediation fee is nonrefundable.
8. The mortgage creditor will designate a representative with knowledge of all of the mortgage creditor's loss mitigation programs with either full authority to make a final decision on the modification or access to an underwriter with full authority to make a final decision on the modification. The representative will continuously attend all scheduled mediation sessions by telephone or video conference. The mortgage creditor's attorney is expected to appear in person or by video conference at the mediation session.
9. All statements made by the parties, attorneys and other participants at or associated with the mediation shall be privileged and not reported, recorded or placed into evidence, made known to the Court or construed for any purposes as an admission. No party shall be bound by any statement made or action taken at the mediation conference unless an agreement is reached. The mediator will keep confidential all statements made at the mediation, and will report to the Court only the results of the mediation.
10. The automatic stay is modified, to the extent necessary, to permit the mortgage creditor to request information, evaluate and analyze the Debtor's financial situation, participate in the mortgage modification process and negotiate, offer and enter into any loan modification terms.
11. The Debtor will comply with all payment terms in the Motion to Participate in the MMM Program. **Failure to comply with payment terms may result in relief from the automatic stay being granted to the mortgage creditor.** The Debtor's compliance with all payment terms in the Motion to Participate and good faith efforts to provide required documents will constitute a defense to the mortgage creditor's Motion for Relief from Stay.
12. All parties are directed to comply with the express terms of this Order and to engage in the mediation process in good faith, including, without limitation, communicating with one another through the Portal with regard to any missing or additional documentation needed and providing the requested documentation through the Portal in a timely manner.

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13. Unless the parties expressly agree in writing, the mediation sessions will conclude no later than 60 days after the date of the Notice of Appointment of Mediator. The Mediator will file a Report of Mediation no later than 7 days after the conclusion of the final mediation session. If neither a written extension nor the Report is filed within 75 days from date of the Notice, the Mediator's appointment will be terminated and the MMM Program will be deemed concluded in this case.
14. The Debtor and the mortgage creditor are directed to promptly take all necessary and appropriate actions to formalize the modification, including filing an amendment to or withdrawal of the mortgage creditor's claim, and/or filing a modified plan.

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UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

In re

Chapter 13
Case No.:

Debtor.

**NOTICE OF MOTION AND MOTION FOR REFERRAL TO
MORTGAGE MODIFICATION MEDIATION PROGRAM**

To: _____ and its successors, assigns and servicing agents (“mortgage creditor”), please take notice:

The undersigned debtor [and joint debtor if applicable] (the “Debtor”) requests an order referring the Debtor and the mortgage creditor, whose mortgage lien encumbers the Debtor’s real property located at _____ (the “Property”) with a mortgage loan number ending in XXXX to the Court’s Mortgage Modification Mediation Program (“MMM Program”). **The mortgage creditor has 14 days from the date of service of this Motion to file a written objection.** If the mortgage creditor does not timely object, this Motion will be granted and the Court will enter an Order without a hearing.

By this Motion, the Debtor agrees and certifies as follows:

Eligibility

1. The Debtor is the owner of the Property.
2. The Debtor has regular income.
3. The Debtor has an unpaid principal mortgage balance that is equal to or less than \$729,750 (for a one-unit property).
4. The Debtor has a mortgage payment that is not affordable due to a financial hardship that can be documented.

Participation Requirements

5. Prior to filing this motion, the Debtor's attorney completed the Debtor's information using the court-approved on-line program that facilitates the preparation of the Debtor's loan modification package ("Document Preparation Software") www.documods.com and has paid the required fee to the Document Preparation Software vendor. The Debtor's initial loan modification forms have been generated and are ready for signature and submission. The Debtor's attorney has collected all of the required supporting documentation as required by the Document Preparation Software and is prepared to submit the supporting documentation along with the modification forms.
6. Prior to filing this motion, the Debtor remitted to the Debtor's attorney the required non-refundable portal submission fee in the amount of \$40.00 and the required non-refundable Document Preparation Software fee in the amount of \$40.00 for a total of \$80.00.
7. The Debtor will register with the approved Mortgage Modification Mediation Web Portal (the "Portal") (www.dclmwp.com) and will provide the mortgage creditor with the mortgage creditor's required loan modification documents (the "Documents") by filing the Documents via the Portal.¹ The list of the required Documents will be posted by the mortgage creditor on the Portal, and the mortgage creditor will use the Portal to download the Documents. The Debtor understands that the Documents may need to be updated, and agrees to use the Portal to provide current Documents upon the mortgage creditor's request.
8. Prior to filing this motion, the Debtor's attorney has determined that the mortgage creditor is registered with the Portal.
9. The Debtor agrees to make post-petition mortgage payments to the mortgage creditor of 31% of the Debtor's gross monthly income or 75% of the Debtor's current mortgage payment, whichever is less (the "Modified Mortgage Payment").
10. The first Modified Mortgage Payment will be due and must be received by the mortgage creditor no later than the next monthly scheduled due date (plus any grace period) after the filing of this Motion. The only exception to this requirement is if the Debtor does not know the identity of the mortgage creditor at the time the payment is due; in that event the Debtor will make the Modified Mortgage Payment to the Debtor's attorney to be held in trust until the mortgage creditor is identified.
11. The Debtor will continue to make the Modified Mortgage Payments to the mortgage creditor each month in sufficient time to be received before the expiration of the grace period until the Mediation Program is concluded or an Order of the Court expressly states otherwise.

¹ Questions about filing or downloading the Documents on the Portal can be directed to DMM Support at 1-800-481-1013 or by email to support@defaultmitigation.com.

12. The Debtor will pay \$200 (the “Mediation Fee”) to the Mediator, no later than fourteen days after appointment of the Mediator. Mediators do not accept Debtors’ personal checks for the Mediation Fee, and the Mediator is not required to perform any services until the fee is received. If the fee is not paid when due, the Mediator will issue a courtesy reminder to the Debtor, and if the fee is not paid promptly, the Mediator will advise the Court and the Order Granting the Mortgage Modification Mediation will be vacated.
13. The Debtor agrees to appear and participate in good faith in the Mediation sessions. The Mediation Fee is nonrefundable even if the Debtor does not appear or does not agree with the outcome of the Mediation session.

Agreed Modification of the Automatic Stay

The Debtor understands, agrees and consents to a Court order modifying the automatic stay as follows:

14. To the extent necessary, the automatic stay is immediately modified as of the date of this Motion to permit the mortgage creditor to request information, evaluate and analyze the Debtor’s financial situation, participate in the mortgage modification process and negotiate, offer and enter into any loan modification terms.
15. If the mortgage creditor does not receive any Modified Mortgage Payment by the due date, including any applicable grace period, the Debtor understands and agrees that the mortgage creditor may file a Motion for Relief from Stay. If the mortgage creditor’s Motion is granted by the Court, the mortgage creditor will be able to pursue any remedy against the mortgaged property available under the mortgage and applicable nonbankruptcy law, including foreclosure.

Mediation Conclusion

16. The Debtor understands and agrees that the mediation sessions will conclude no later than 60 days after a mediator is selected. Unless the Debtor and the mortgage creditor agree in writing to extend the deadline, the mediator will issue a report to the Court within 7 days after the conclusion of the 60-day period. If neither a written extension nor the final report is filed within 75 days after a mediator is selected, the mediator’s appointment will be terminated, and the MMM Program will be deemed concluded in this case.
17. If no report is filed or the report advises that no agreement was reached, the Debtor understands and agrees to file a modified feasible Chapter 13 plan to address the claim of the mortgage creditor and the Debtor’s other creditors. Failure to file such a

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modified plan within a reasonable period of time is cause for granting the mortgage creditor relief from the automatic stay and/or dismissal of the Debtor’s Chapter 13 case.

Successful Mortgage Modification

- 18. If a modification is agreed upon, the Debtor will cooperate in promptly formalizing any needed legal documents including the filing of a modified Chapter 13 plan, if appropriate.
- 19. The Debtor agrees that upon successful completion of the MMM Program and entry into a mortgage modification agreement, the Debtor will not voluntarily dismiss this Chapter 13 case for at least nine months. The Debtor may seek relief from this provision for good cause shown.

WHEREFORE, the Debtor requests that the Court enter an Order referring the Debtor and the mortgage creditor to the MMM Program.

Dated: _____
Debtor’s Signature

Dated: _____
Joint Debtor’s Signature

CERTIFICATE OF SERVICE (OR AFFIDAVIT OF MAILING)

The Debtor’s attorney certifies that on _____ (date) a copy of this Notice and Motion was served by (describe method of service) on the mortgage creditor and its counsel (if known) at the following addresses: (list)

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WISCONSIN

In re: _____ : Chapter 13
: _____
: Case No:
: _____
Debtor. : _____

MEDIATOR'S FINAL REPORT

Name of Debtor's Counsel:

Name of Lender and Counsel:

Property Address:

Last Four Digits of Account Number of Loan:

Mediation Session Date(s):

How long from the Date of Appointment of Mediator to Date of Final Report: _____ days

The use of the Court's Mortgage Modification Mediation Program has resulted in the following (please check appropriate box below):

- Loan Modification.
- Surrender of property.
- No agreement has been reached.
- Other:

The filing of this *Mediator's Final Report* terminates the Mortgage Modification Mediation with respect to the loan identified above by the last four digits of the account number.

Dated: _____

Signature: _____, **Mediator**



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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

www.flsb.uscourts.gov

In re:

Case No.
Chapter

_____ Debtor(s) _____ /

DEBTOR'S NOTICE OF SELECTION OF MORTGAGE MODIFICATION MEDIATOR

Pursuant to the Mortgage Modification Mediation (MMM) procedures adopted under Administrative Order 14-03, this Notice is filed by the Debtor to notify the court on the status of the selection of mediator in the above referenced case.

1. The parties agree to and select the following Mediator:

Name of Mediator

COMPANY

City, State, Zip Code

Telephone
email: _____

2. The Lender, _____, failed to contact the Debtor within the time prescribed in the order of referral, and has therefore waived the right to participate in the mediator selection process. The Debtor has selected the following Mediator:

Name of Mediator

COMPANY

City, State, Zip Code

Telephone
email: _____

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3. The parties have conferred but are unable to agree upon the selection of a mediator, and Debtor requests that the clerk select a mediator from the clerk's Mediation Register.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Notice of Selection of Mortgage Modification Mediator was served by U.S. first class mail upon the parties listed below on _____, 20____.

/s/ _____
Attorney for Debtor Self-Represented Debtor

Address

Telephone

Fax

Florida Bar No. (if applicable)

email

Copies to:
[Debtor]
Lender (identify name of Lender and where notice sent)
[Attorney for Lender]
Any Co-borrower
The Mediator (notice sent to email address only)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
www.flsb.uscourts.gov

In re:

Case No.
Chapter

_____ Debtor (s) _____ /

**Attorney-Represented Debtor's Verified Ex Parte Motion for Referral to
Mortgage Modification Mediation**

The Debtor files this Verified Ex Parte Motion for Referral to Mortgage Modification Mediation ("Ex Parte Motion") and requests the Court enter an Order Granting Debtor's Ex Parte Motion for Referral to Mortgage Modification Mediation ("Ex Parte Order") referring Debtor and _____ ("Lender") to Mortgage Modification Mediation ("MMM") and states as follows:

1. Debtor is an individual who has filed for bankruptcy relief under, or converted to, chapter _____ on _____.
2. Debtor requests MMM for real property ("Property") located at the following street address: _____
_____; account number for this Property is _____ (last four digits).
 - a. The Property is (check one box):
 - the Debtor's primary residence
 - not the Debtor's primary residence

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b. Borrowers obligated on the promissory note and mortgage on the Property are (check one box):

- Debtor only
- Debtor and non-filing co-obligor/co-borrower/third party

Contact information for co-obligor/co-borrower/third party:

Name: _____

Address: _____

Telephone: _____

email: _____

Other:

Name: _____

Address: _____

Telephone: _____

email: _____

c. If applicable, Debtor's attorney has simultaneously filed with this Motion the MMM Local Form "Third Party's Consent to Attend and Participate in Mortgage Modification Mediation" signed by each co-obligor/co-borrower/third party listed above.

3. Debtor intends to (check all boxes that apply):

- modify the mortgage on the Debtor's primary residence.
- modify the mortgage on Property that is not the Debtor's primary residence.
- surrender the Property to the Lender.

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4. Prior to filing this motion, Debtor remitted to Debtor's attorney the required non-refundable portal submission fee in the amount of \$60.00 and the required non-refundable Document Preparation Software fee in the amount of \$60.00 for a total fee of \$120.00.
5. Prior to filing this motion, Debtor's attorney completed Debtor's information using the court-approved on-line program that facilitates the preparation of the Debtor's loan modification package ("Document Preparation Software") and has paid the \$60.00 Document Preparation Software fee to the approved vendor. Debtor's initial loan modification forms have been generated and are ready for signature and submission. Debtor's attorney has also collected all of the required supporting documentation as required by the Document Preparation Software (such documentation and forms referred collectively to as "Debtor's Prepared Package") and is prepared to submit the supporting documentation along with the modification forms.
6. Prior to filing this motion, Debtor's attorney has determined that:
 - Lender is registered with the approved Mortgage Modification Mediation Portal ("MMM Portal");
 - Lender is not registered. Debtor requests the Court require Lender to register with the MMM Portal within seven days after entry of the Order.
7. Debtor requests Lender consider (check as many boxes as applicable):
 - a HAMP or government sponsored loan modification

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- a conventional loan modification
- a deed in lieu of foreclosure
- a state court consent *in rem* final judgment of foreclosure
- surrender options
- other: _____

8. IF DEBTOR IS REQUESTING NON-RETENTION (SURRENDER) OPTIONS:
- a. Debtor will submit all additional documents required for surrender as provided for on the MMM Portal.
 - b. Debtor represents that the property has been listed for sale.
9. Prior to filing this motion, Debtor remitted the required mediator's fee in the amount of \$300.00 to Debtor's attorney, unless the Debtor is seeking pro bono mediation under paragraph 11. Debtor understands and acknowledges that after the mediator is designated, the mediator's fee is not refundable for any reason at any time.
10. Within seven days after filing the MMM Local Form "Debtor's Notice of Selection of Mortgage Modification Mediator (or "Notice of Clerk's Designation of Mortgage Modification Mediator") or the Lender's registration on the MMM Portal, whichever occurs later, Debtor's attorney shall upload and submit through the MMM Portal, Debtor's Prepared Package, together with any additional forms or documents which Lender may post on the MMM Portal, and pay a non-refundable MMM Portal submission fee in the amount of \$60.00. In addition, the Debtor's attorney

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will upload the Order to the MMM Portal as part of the submission of Debtor's documentation.

11. Debtor's attorney:

will forward the mediator's fee directly to the mediator within seven days after designation of the mediator; **OR**

represents that the Debtor requests he/she be considered as a candidate for pro bono mediation because the Debtor's undersigned attorney is representing the Debtor pro bono, or Debtor's income is less than 150% above the poverty level (see attached calculation).

12. Debtor consents to Lender communicating directly with Debtor's attorney for any and all aspects of the mortgage modification mediation program.

13. [For chapter 7 debtors] Debtor understands and consents to this Court's MMM procedures which require that, if the Debtor becomes otherwise eligible for entry of a discharge before the MMM process is completed, the Court shall delay issuance of the discharge until either an agreement is reached or the parties reach impasse as reflected in the Local Form "Final Report of Mortgage Modification Mediator".

WHEREFORE, Debtor requests that the Ex Parte Motion be granted and for such other and further relief as this Court deems proper.

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DEBTOR'S VERIFICATION

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury the foregoing is true and correct on _____, 20_____.

Debtor

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Debtor's Ex Parte Motion for Referral to Mortgage Modification Mediation was served by U.S, first class Mail, upon the parties listed below on _____, 20_____.

/s/ _____
Attorney for Debtor(s)
Address: _____

Telephone: _____
Fax: _____
Florida Bar No.: _____
email: _____

Copies to:

Lender (identify name of Lender and where notice sent)

Lender's counsel (if you already know who Lender's counsel is)

Any co borrower, or additional party named in 2 b. of this motion by U.S. Mail or email

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA

www.flsb.uscourts.gov

In re:

Case No.

Chapter

_____ Debtor(s) _____ /

**EX PARTE MOTION TO APPROVE MORTGAGE MODIFICATION
AGREEMENT WITH (LENDER)**

The above-referenced Debtor requests the Court enter an Order approving the Mortgage Modification Agreement with _____ (“Lender”) with respect to real property located at _____ (street address) and states as follows:

1. The Court referred this matter to Mortgage Modification Mediation (“MMM”) on _____ (ECF # ____).
2. The final MMM conference was held on _____.
3. The MMM Mediator filed a Final Report of Mortgage Modification Mediator on _____ (ECF # ____), reporting the parties reached an agreement.
4. Attached is a copy of the Agreement entered into between the parties (with all personal identifiers redacted).
5. Pursuant to the Agreement, the Lender will draft all documents required by the Agreement, other than pleadings or plans required to be filed in this case.

[For chapter 13 cases only]:

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- 6. Pursuant to the Agreement, the Debtor shall amend/modify the last filed chapter 13 plan on or before _____ to provide for the payment.
- 7. All payments shall be considered timely upon receipt by the trustee, not upon receipt by the Lender.
- 8. The trustee may disburse the payment as adequate protection to the Lender until such time as the plan/modified plan is confirmed, or the case is dismissed or converted to another chapter.

WHEREFORE, the Debtor requests the Motion to Approve Mortgage Modification Agreement with _____ (“Lender”) be granted and for such other and further relief as this Court deems proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Motion to Approve Mortgage Modification Agreement with _____, was served by U.S, first class mail, upon the parties listed below on _____, 20____.

/s/ _____
Attorney for Debtor(s)
Address: _____

Telephone: _____
Fax: _____
Florida Bar No.: _____
email: _____

Copies to: [all parties to mediation]

2021 CONSUMER PRACTICE EXTRAVAGANZA

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

www.flsb.uscourts.gov

In re:

Case No.
Chapter

_____ Debtor(s) _____ /

**Order Granting Debtor's Verified Ex Parte Motion for Referral to
Mortgage Modification Mediation**

This matter came before the Court upon the Attorney-Represented Debtor's Verified Ex Parte Motion for Referral to Mortgage Modification Mediation ("Ex Parte Motion") filed on _____ in accordance with this Court's Mortgage Modification Mediation ("MMM") program procedures and regarding Debtor's real property located at _____, (street address) and the mortgage on this property held by _____ ("Lender").

MMM-LF-02 (rev. 03/08/21)

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It is **ORDERED** as follows:

1. The Ex Parte Motion is granted. The Lender may seek reconsideration of this Order by filing a written motion on or before 14 days after entry of the Order. If a timely motion for reconsideration is filed, the Court will promptly schedule a hearing in accordance with Local Rule 9073-1. In the event a motion for reconsideration is timely filed, all deadlines set forth in this Order shall be suspended pending resolution of the motion, but all other provisions shall remain in effect.
2. The Debtor and Lender are required to participate in Mortgage Modification Mediation (“MMM”) in good faith. MMM shall be concluded not later than 150 days from the date of the Order, unless extended by written consent on the approved Mortgage Modification Mediation Portal (“MMM Portal”), by stipulation of the parties or by court order.
3. All communications and information exchanged during MMM are privileged and confidential as provided by Federal Rule of Evidence 408 and Chapter 44 of the Florida Statutes, and shall be inadmissible in any subsequent proceeding.
4. All written communication between the parties regarding the mediation must be sent through the approved portal (“MMM Portal”) only, unless otherwise ordered by the Court. Any litigated matters incidental to the mediation shall be considered as separate matters and not subject to the portal communication requirement.
5. The Lender (and Lender’s counsel, if any) shall register with the MMM Portal, unless already registered, within seven days after entry of this

2021 CONSUMER PRACTICE EXTRAVAGANZA

- Order, and designate its single point of contact and outside legal counsel, if any. If the Lender fails to register, the Debtor may file a motion with the Court seeking sanctions against the Lender for Lender's failure to register.
6. Lender's counsel or representative shall have the authority (within the investor's guidelines) to settle and will attend and continuously participate in all MMM conferences in this case.
 7. Debtor's attorney shall, within seven days after the filing of Debtor's Notice of Selection of Mortgage Modification Mediator (or Notice of Clerk's Designation of Mortgage Modification Mediator), or after confirming that the Lender is registered on the MMM Portal, whichever occurs later, remit to the MMM Portal the required non-refundable MMM Portal submission fee in the amount \$60.00, and upload to the MMM Portal the following (collectively, the "Completed Package"):
 - (a) Debtor's loan modification package (prepared using the Document Preparation Software);
 - (b) a copy of this Order; and
 - (c) any additional lender-specific information identified by Lender on the MMM Portal.
 8. The Lender shall, within seven days after Debtor's delivery of the "Completed Package", acknowledge receipt of Debtor's information and advise Debtor of any additional or missing information required for Lender to proceed with its review.
 9. In the event the Lender requires additional or missing information to consider the Debtor's requested mortgage modification options as

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specified in the Ex Parte Motion, the Lender shall so notify Debtor through the MMM Portal within seven days of Debtor's submission ("Notice"). The Debtor shall provide all additional documents through the MMM Portal within seven days of the Notice.

10. The Lender shall timely underwrite the loan modification request.
11. If the Lender transfers the loan, the Lender must provide a copy of the Order to the new holder of the loan ("Successor Lender"), and the Successor Lender will be obligated to comply with all terms of this Order.
12. **PROCESS FOR SELECTION OF MEDIATOR:**
 - (a) The parties shall have 14 days from the date of this Order to select a mediator. If the parties agree on the selection of a mediator, the Debtor shall file the MMM Local Form "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 1 and insert mediator name and contact information), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F).
 - (b) If the Lender fails to communicate with the Debtor within the 14 day period established for the mediator selection process, the Debtor shall, within seven days, independently select a mediator and file the "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 2 and insert mediator name and contact information), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). In this

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instance, it shall be deemed that the Lender has waived the right to challenge Debtor's selection of a mediator.

- (c) If the parties attempt to reach agreement on the selection of a mediator, but fail to do so, the Debtor shall file the "Debtor's Notice of Selection of Mortgage Modification Mediator" (Check Box 3 indicating an impasse), serve a copy of the notice on all required parties, and file a Certificate of Service pursuant to Local Rule 2002-1(F). The clerk shall then randomly select a mediator from the clerk's Mediation Register pursuant to Local Rule 9019-2(B)(3), without the necessity of a hearing. The clerk shall serve notice of the mediator selection on the required parties using the MMM Local Form "Notice of Clerk's Designation of Mortgage Modification Mediator". Local Rule 9019-2(B) shall apply to any challenge to the clerk's designation of mediator.
- 13. Debtor's attorney shall assign the mediator as the mediator in this case on the MMM Portal within seven days after designation.
 - 14. The mediator shall:
 - (a) be governed by the standards of professional conduct set forth in the Florida rules for certified and court-appointed mediators and shall have judicial immunity in the same manner and to the same extent as a judge;
 - (b) subject to paragraph 15 below, be compensated in the amount of \$600.00 for preparation for MMM, execution of required documents,

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facilitation of document and information exchange between the parties, and participation in no more than two one-hour MMM conferences.

- (c) be compensated at the rate set by this Court's Local Rule 9019-2(6) for any MMM conferences that extend beyond the initial two one-hour conferences.

15. The mediator's fee shall be paid equally by the parties as follows:

- (a) The Debtor shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within seven days designation of the mediator; **OR**
 The Court finds that the Debtor qualifies for a mediator *pro bono*. The mediator shall notify the Court and the Debtor immediately by motion if the mediator is not willing to serve *pro bono* and state in the motion to be excused from *pro bono* mediation, the reasons why the mediator seeks to be excused.
- (b) The Lender shall pay a non-refundable fee in the amount of \$300.00 directly to the mediator within seven days after designation of the mediator.
- (c) The mediator's fee for MMM conferences that extend beyond two, one-hour conferences, shall be paid equally by the parties (unless the Debtor is receiving *pro bono* mediation, in which case the Lender shall pay its half) and is due and payable at the beginning of each successive MMM conference in accordance with the program procedures.

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16. The mediator shall log in to the MMM Portal within seven days after designation and use the MMM Portal to facilitate any additional exchange of information or documentation between Debtor and Lender in an effort to perfect the documents needed for Lender to complete its analysis of Debtor's mortgage modification mitigation options.
17. If the mediator either fails to timely register or log in to the MMM Portal to begin to facilitate the MMM process, any party to the mediation may file a motion requesting that the mediator be removed from this case and, if applicable, be removed from the clerk's Mediation Register.
18. **MEDIATION CONFERENCE:**
 - (a) The mediator shall schedule the initial MMM conference no later than seven days after determining that the Lender has received and reviewed all requested information. In the event the mediator cannot determine that the Lender has received all the requested information, the mediator shall schedule the initial MMM conference within 90 days of this Order. The initial MMM conference shall not exceed one hour. The mediator shall report the scheduling of all MMM conferences on the MMM Portal.
 - (b) The Lender and Lender's representative may participate in the MMM conference by telephone.
 - (c) The Debtor and any co-obligors/co-borrowers or other third party may participate in the MMM conference by telephone provided they are physically present with Debtor's attorney and present

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- identification to Debtor's attorney counsel during all MMM conferences.
- (d) Debtor shall provide a foreign language interpreter, if necessary, at the Debtor's own expense.
 - (e) All parties attending the MMM conference must be ready, willing and able to sign a binding settlement agreement at the MMM conference and have the ability to scan, send and receive documents by facsimile, email or other electronic means at the time of the MMM conference.
19. In the event the parties are unable to reach an agreement and require an additional MMM conference, the mediator shall schedule a final MMM conference no later than 30 days thereafter. The final MMM conference shall not exceed one hour.
20. In the event the parties reach a final resolution or, if no agreement has been reached, the mediator shall report the results of the MMM on the MMM Portal not later than seven days after the conclusion of the final MMM conference. The mediator shall also complete and file with the Court, either conventionally or via CM/ECF, the MMM Local Form "Final Report of Mortgage Modification Mediator", within two business days following entry of the final report data on the MMM Portal.
21. If applicable, Debtor's attorney shall file the MMM Local Form "Ex Parte Motion to Approve Mortgage Modification Mediation Agreement with Lender", no later than 14 days following the filing of the Final Report and upload the MMM Local Form "Order Granting Motion to Approve Mortgage

2021 CONSUMER PRACTICE EXTRAVAGANZA

Modification Mediation Agreement with Lender” to the Court’s E-Orders program. The parties shall also seek any necessary Court approval and formalize any required legal documents in a timely fashion thereafter.

22. The automatic stay is modified to the extent necessary to facilitate MMM pursuant to this Order.
23. [For chapter 7 debtors] Notwithstanding that the Debtor may be eligible for entry of a discharge before the MMM process is completed, the Court shall delay issuance of the discharge until either an agreement is reached or the parties reach impasse as reflected in the Local Form "Final Report of Mortgage Modification Mediator".
24. Any of the deadlines imposed by this Order may be extended by order of the Court.
25. If any parties or counsel fail to comply with the terms of this Order, the Court will consider a motion to vacate the Order and may also impose sanctions.
26. The Debtor’s attorney shall serve a copy of this Order on all parties to the mediation, immediately upon receipt. Service shall be by regular U.S. Mail, electronic service, or email, if the party’s email address is known.

###

Copies furnished to:

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

www.flsb.uscourts.gov

In re:

Case No.

Chapter

_____ Debtor(s) _____ /

**ORDER GRANTING MOTION TO APPROVE MORTGAGE MODIFICATION
AGREEMENT WITH (LENDER)**

This matter came before the Court:

- On the Debtor's Ex Parte Motion to Approve Mortgage Modification Agreement with _____ ("Lender").
- For hearing on _____, upon Self-Represented Debtor's Motion to Approve Mortgage Modification Agreement with Lender.

2021 CONSUMER PRACTICE EXTRAVAGANZA

The Court, having considered the motion and being otherwise fully advised in the premises, it is

ORDERED as follows:

1. The Motion to Approve Mortgage Modification Agreement between the Debtor and _____ (“Lender”) regarding real property located at _____(street address) is granted.
2. The parties are authorized to take any and all necessary actions to effectuate the terms of the Agreement.
3. [For chapter 13 cases] The Debtor shall amend/modify the last filed chapter 13 plan on or before _____ to provide for the payment.
4. The Court reserves jurisdiction to enforce the terms of the Agreement and this Order.

###

Debtor [or Debtor’s attorney] shall serve a conformed copy of this Order upon all parties of interest and shall file a Certificate of Service in accordance with Local Rule 2002-1(F).

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA**

www.flsb.uscourts.gov

In re:

Case No.
Chapter

_____ Debtor _____ /

FINAL REPORT OF MORTGAGE MODIFICATION MEDIATOR

The undersigned court-appointed mortgage modification mediator, reports to the Court as follows regarding Debtor's real property located at _____, (street address) and the mortgage on this property held by _____ ("Lender"):

A. The final Mortgage Modification Mediation ("MMM") conference was conducted on _____ and the following parties were present:

1. The Debtor [and Debtor's attorney], _____
2. The co-obligor/co-borrower/or other third party, _____
3. The Lender's representative, _____
and Lender's attorney, _____
4. Other: _____

B. The final MMM conference was scheduled for _____, but not conducted for the following reason:

1. The parties settled prior to attending.
2. The case was dismissed.
3. The Debtor or Debtor's attorney failed to attend.
4. The Lender's representative or Lender's attorney failed to attend.
5. Other: _____.

C. The result of the MMM conference is as follows:

1. The parties reached an agreement.
2. The parties did not reach an agreement.

Dated: _____

Signature of Mediator
Print name: _____
Address: _____
City, State, Zip Code: _____
Telephone: _____
email: _____

Copies to:
[all parties to mediation]

Faculty

Jeffrey S. Fraser is a partner at Albertelli Law in Lake Worth, Fla., and focuses his representation on secured creditors and ensuring that their interests are protected in chapters 7, 11 and 13. He handles contested litigation, including valuation hearings, adversary proceedings, sanction hearings, and any and all other disputed matters in bankruptcy court. As partner over his firm's national bankruptcy department, Mr. Fraser works closely with each state's managing attorneys as it relates to training, legal strategy, and all facets of the firm's bankruptcy practice. He is an active participant in the Southern District of Florida's bankruptcy bar and was the 2019 chair of the Local Rule Committee and an inaugural member the district's Lawyer Advisory Committee (LAC), serving as the committee's chair in 2020 and 2021. Through these roles, he has worked closely with South Florida bankruptcy judges and lawyers in reviewing local practices and rules; participating as a panelist for various district programs; assisting with the drafting of the district's Model Chapter 13 Plan and Mortgage Modification Mediation procedures and guidelines; and addressing other matters or concerns for the South Florida bankruptcy community. Mr. Fraser is a past president of the Jamaican-American Bar Association and has helped the organization create mentorship relationships with local law students. He also served as a panelist at a commercial law seminar in Kingston, Jamaica, discussing the 2014 Jamaican Insolvency Act, and he has organized foreclosure and bankruptcy workshops, spoken on numerous CLE panels, and guest-appeared on South Florida radio. Mr. Fraser was selected by *Super Lawyers* as one of its "Florida Rising Stars" for 2019, 2020 and 2021. In addition, he was named a 2017 Blackshear Fellow by the National Conference of Bankruptcy Judges (NCBJ) and a 2020 ABI "40 Under 40" honoree, and he has published articles on consumer bankruptcy issues in the *American Legal & Finance Network* and *Default Servicing News*. Mr. Fraser has the highest rating by Martindale-Hubbell. He received his B.A. in 2007 from the University of Miami and his J.D. in 2010 from the University of Miami School of Law.

Amy H. Koltz is president, executive director and a mediator for Metro Milwaukee Mediation Services, Inc. (d/b/a Mediate Wisconsin), a 501(c)(3) nonprofit organization in Brookfield, Wis. The organization administers such housing mediation programs as the Landlord-Tenant Mediation Program, the Metro Milwaukee Foreclosure Mediation Program and the Wisconsin Foreclosure Mediation Network. Ms. Koltz is an adjunct professor at Marquette University Law School, where she teaches workshops on client interviewing and counseling, mediation advocacy and negotiation. She also is a roster mediator for the Mortgage Modification Mediation Program through the Eastern and Western District of Wisconsin Bankruptcy Courts. Ms. Koltz is a former chair of the Wisconsin State Bar's Dispute Resolution Section Board and continues to serve on the board chairing its Mediation Week Committee. She received her B.A. from the College of William and Mary and her J.D. from Marquette University Law School, and she holds a Graduate Certificate in Dispute Resolution from Marquette University.

Rachael A. Stokas is a supervising bankruptcy attorney at Codilis & Associates P.C. in Burr Ridge, Ill., and practices bankruptcy law in Illinois, Wisconsin, Missouri, Texas and Indiana. She has been with Codilis for nearly 20 years and has been the supervising attorney over its Bankruptcy team since 2016. Ms. Stokas is an experienced creditors' rights practitioner in the fields of bankruptcy, mediation, foreclosure, real estate and eviction. She has been a member of the Illinois Bar since Feb-

ruary 2002 and a member of the Missouri Bar since October 2008, and she is admitted to practice in the U.S. District Courts of Northern, Central and Southern Illinois, Eastern and Western Missouri and Wisconsin, Southern Indiana, and Eastern, Northern and Southern Texas. She has served on the Northern District of Illinois Bankruptcy Liaison Committee and is currently an active participant on the Eastern District of Wisconsin's Bench Bar Committee. Additionally, she is an active member of ABI, the Illinois Bar Association and Phi Alpha Delta Law Fraternity. Ms. Stokas received her B.A. from Emory & Henry College and her J.D. from the University of Dayton School of Law.

Laurie K. Weatherford is the chapter 13 standing trustee for the Middle District of Florida in Orlando. Prior to her appointment in 1996, Ms. Weatherford was Of Counsel with the law firm of Maguire, Voorhis & Wells, representing primarily debtors and creditor committees in chapter 11 cases, and was a chapter 7 panel trustee. She tried a jury trial in the *In re Braniff* case and helped develop the Mortgage Modification Mediation Program for the U.S. Bankruptcy Court in Orlando. Ms. Weatherford frequently lectures on mortgage modification and various chapter 13 issues. She is a member of the National Association of Chapter 13 Trustees, for which she serves on its Mortgage Committee. She also served on the board of directors of the Central Florida Bankruptcy Law Association and is a past chairman of the Bankruptcy Committee of Orange County, Fla. Ms. Weatherford received her B.A. with honors from the University of Florida and her J.D. with honors from Cumberland School of Law, where she was an honor court justice, a member of the International Law Moot Court Team and copy editor for the *Cumberland Law Review*.