



BANKRUPTCY COURT ROLLS OUT NEW MEDIATION PROGRAM FOR CHAPTER 13 DEBTORS

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The Eastern District of Wisconsin Bankruptcy Court has introduced a new Mortgage Modification Mediation program (the “MMM Program”) to assist Chapter 13 bankruptcy debtors in their attempt to modify their home mortgages. The MMM Program is modeled after a similar program offered by Marquette Law School, and is intended to assist those debtors who are not eligible for a modification under the Home Affordable Mortgage Program or other similar programs. The MMM Program is, in theory, a voluntary program for both debtors and creditors; however, it is heavily endorsed and promoted by the very judges who will rule on disputes. As a result, creditors who extend home loans in Northeast Wisconsin should be well versed in how the MMM Program works.

Overview of MMM Program. The MMM Program is designed to provide a permanent modification for Chapter 13 debtors who cannot afford their current mortgage payment, but have steady income to pay a modified mortgage payment on a debtor’s primary residence (investment properties do not qualify). A debtor’s mortgage balance must be less than \$729,750, and a debtor must allege an inability to make the original payment due to a financial hardship.

The Process: It appears that only a debtor may file a motion to participate in the MMM Program. A debtor must serve a copy of the motion on the creditor, who then has 21 days to respond to the motion. The court will not schedule a mediation until a debtor provides certain information to the creditor (see “Requirements of Debtor,” below). The Court’s goal is to complete mediation within 60 days of a debtor’s motion through one of about 25 mediators spread across the State of Wisconsin. The creditor must appear by a representative with settlement authority (preferably in person, or by telephone or video conference). If the mediation is successful and the mortgage is modified, a debtor agrees not to voluntarily dismiss the Chapter 13 bankruptcy for at least 9 months.

Requirements of Debtor: By electing to participate in the MMM Program, a debtor is subject to certain heightened standards:

1. A debtor must make monthly post-petition payment of the lesser of 31% of a debtor’s gross monthly income or 75% of a debtor’s current mortgage payment (including principal, interest and escrow) starting with the next monthly scheduled due day (plus any grace period) after the motion is filed. For example, if a debtor files a motion to participate on May 3, they must begin making payment on their scheduled payment day in June. The arrearage will still be addressed in the Chapter 13 plan.

2. If a debtor misses even one of the modified mortgage payments, the automatic stay is lifted by affidavit of the creditor without a hearing.
3. A debtor must file complete schedules.
4. A debtor must supply the creditor with at least 2 years of signed tax returns, evidence of income for the past 60 days (i.e. pay-stubs) and any other documents lender requests. Other documents may include utility bills, hardship affidavits, and verification of other income sources.
5. If a debtor misses a modified mortgage payment within the first year after a successful modification, the automatic stay may be lifted by affidavit of the creditor without a hearing.
6. If the mediation is not successful, a debtor agrees that the automatic stay may be lifted or, in the alternative, a debtor will promptly propose an amended Chapter 13 plan to pay the original mortgage.

Cost: Both a debtor and the creditor share the costs of the MMM Program. Each are required to submit a mediation fee of \$125.00 to the mediator. The fee is not refundable.

Scope: For now, the MMM Program will only apply to Chapter 13 cases; however, the court hopes to expand the program to Chapter 7 cases if successful.

Summary: The MMM Program has some obvious advantages for creditors. First, it requires debtors to make modified payments to the creditor between the time of filing and the mediation program. Second, it allows the creditor to lift the automatic stay by affidavit if a debtor fails to make the modified payments. (Note: the court has not released any official guidance yet on whether the creditor will still need to pay the \$150.00 filing fee to lift the stay, although we suspect that fee will continue to apply). Finally, we expect that the judges will have little sympathy for debtors who ultimately fail to make the modified payments agreed to by a cooperative creditor.

A creditor that does not wish to participate in the MMM Program should be prepared to be met with some sharp criticism from the bench. In addition, creditors should understand that, if a debtor does not comply with the mediation order, the creditor's only remedy is the same foreclosure action that it could have filed without participating in the MMM Program. The creditor is still subject to the redemption periods applicable under state law.

Please contact a member of our Banking Team if you have any further questions regarding this program. We can be reached (920) 437-0476 or www.lcojlaw.com.