

RULE 4001-7. LOSS MITIGATION MEDIATION PROGRAM.

(a) Availability of Mediation in Bankruptcy Cases.

- (1) At any time prior to discharge, an individual debtor or a creditor holding a claim secured by real property owned by an individual debtor, may file a motion for loss mitigation mediation (“motion for mediation”). See Local Form MM # 1. A motion for mediation may be filed for any mortgage on the debtor’s primary residence provided mediation would be available in a case pending in state court.
- (2) The motion for mediation must be served on all creditors who could claim an interest in the property, the case trustee, the Vermont Attorney General (AGO.MediationReport@vermont.gov) and the mediator, if known.
- (3) Any objection to the motion for mediation must state either why mediation is not likely to be useful to the parties or of benefit to the estate, or why it would not be available in state court.

(b) Mediation Guidelines.

- (1) Mediators shall have broad discretion and shall be responsible for directing and completing the process expeditiously.
- (2) The parties shall cooperate in good faith, under the direction of the mediator, and produce all documents and information required in a timely manner.
- (3) The parties must consider all available foreclosure prevention tools and loss mitigation options, including but not limited to reinstatement, loan modification, forbearance, short sale, and surrender.
- (4) If the creditor claims a pooling and servicing or other similar agreement does not authorize loan modification, the creditor must provide the debtor and mediator with a copy of that agreement. All such agreements are confidential and shall not be filed in the case.
- (5) The following persons must participate in any mediation conducted under this Rule:
 - (A) the debtor and the attorney for the debtor (if any);
 - (B) the attorney for the creditor (if any); and
 - (C) the creditor, or a person designated by the creditor or its servicer who has real-time access during the mediation to the creditor’s account information and to the records relating to consideration of the options available.
- (6) Mediations shall take place in a mutually convenient location, by telephone or video conferencing, as determined by the mediator.

(c) Eligibility to Serve as a Mediator in Bankruptcy Court Mediations. To serve as mediator, an attorney must meet the minimum certification requirements of the Vermont state court mediation program and have significant bankruptcy experience.

(d) Time Frame for the Mediation Process.

- (1) Selection of a Mediator.

- (A) The parties may either stipulate to (1) the selection of a mediator within seven days of the creditor's participation in the case as evidenced either by the filing of a proof of claim or a notice of appearance; or (2) reserve a timeline for the appointment of a mediator if they prefer to attempt to negotiate a loan modification directly.
 - (B) If the parties are unable to stipulate to the selection of a mediator, or deferment of a mediator's appointment, the debtor shall file an application requesting that the Court designate a mediator.
- (2) Mediation Process.
- (A) Upon the mediator's appointment, the moving party shall forward to the mediator a copy of (i) the motion for mediation, (ii) all documents filed in support of that motion, and (iii) the promissory note and mortgage that are the subject of the mediation.
 - (B) The mediator shall make initial contact with the parties within seven days of appointment.
 - (C) Mediation shall be complete within 120 days of the mediator's appointment and the mediator shall file a final report of mediation within seven days of completing mediation. See Local Form MM #12. If mediation is not complete within 120 days, the parties to the mediation shall file a status report advising the Court: what has transpired thus far in the mediation, where the process currently stands, and anticipated developments. If reports are not timely filed, the parties shall appear at a status hearing set by the Court.
- (3) Result.
- (A) If mediation results in a successful loan modification, the parties shall file a motion for approval of a loan modification. See Local Form W-3.
 - (B) If the debtor believes the creditor denied the modification in bad faith or reached a conclusion based on erroneous facts or calculations, the debtor may file a motion to compel the creditor to participate in further mediation within 14 days' notice of the creditor's denial.
- (4) The entry of the debtor's discharge shall not be delayed due to an open mediation in their case.
- (5) The mediator shall serve a copy of the final report of mediation on the Vermont Attorney General.

(e) The Mediation Fee.

- (1) The mediator is entitled to a fee per mediation up to the amount set forth in Vt. LB Appendix XI, which shall be allocated equally among the parties to the mediation.
- (2) If the mediator or a party to the mediation seeks to change the amount or allocation of the fee for the mediation, that person shall file a motion showing cause for such relief on 14 days' notice to all parties to the mediation and the case trustee.

(f) Post-Final Report Requirements and Obligations.

- (1) Within 14 days of the filing of the final report of mediation, the moving party must file (A) a motion to declare mediation closed with a proposed order attached (Local Form MM # 11), or (B) a stipulation requesting that mediation not be closed until a particular date or the occurrence of a particular event (e.g., the approval of a temporary payment plan or execution of a final modification agreement).

(2) If the moving party fails to timely file a motion to close mediation, the mediator or any party to the mediation may file a motion to close mediation. See Local Form MM # 11.

(g) Mediator Prohibited from Testifying About the Mediation. Mediators may not be required to testify in any action relating to issues in a mediation conducted pursuant to this Rule, other than as to whether a party participated in good faith.

(h) Retention of Jurisdiction. This Court retains jurisdiction to interpret and enforce any agreement or result obtained through mediation conducted pursuant to this Rule.

(i) Service. Whenever a debtor is required to serve a creditor under this Rule, the debtor must serve the creditor at the address set forth on the creditor's proof of claim, if a proof of claim has been filed.