

Attachment E
to 12/12/14 BB Agenda

VT. LBR 4001-7. MORTGAGE MEDIATION AND LOSS MITIGATION PROGRAM

(a) Availability of Mediation in Bankruptcy Cases.

- (1) In any case filed in this Court under Chapter 7, 11, 12, or 13, a party may file a motion for mortgage mediation ~~(Vt. loss mitigation (hereinafter "mediation"))~~ (Vt. LB MM Form #1).
- (2) Parties may seek mediation with respect to any mortgage on the debtor's primary residence provided the property has four units or less (regardless of whether the mortgage is subject to the HAMP guidelines).
- (3) With the creditor's consent, mediation will be available at any time during the pendency of any Chapter 7, 11, 12, or 13 bankruptcy case.
- (4) In the absence of the creditor's consent, the Court will not grant a debtor's motion for mediation if the Court has already entered either: (A) a discharge order; or (B) an order granting relief from stay to that creditor on the subject property.
- (5) Mediation will not be permitted if the creditor objects and:
 - (A) mediation has already been completed, or was begun and abandoned by the debtor; or
 - (B) modification of the mortgage is essential to the confirmation of a plan and the debtor has failed to file a motion for mediation prior to the confirmation hearing; or
 - (C) the parties have filed a stipulation in the bankruptcy case with respect to the debtor's obligations under the subject mortgage.

(b) The Mediation Process.

- (1) The parties engaged in mediation under this Rule must cooperate in good faith under the direction of the mediator to produce the information required by this Rule in a timely manner so as to maximize the effectiveness of the mediation.
- (2) In mediation, the creditor must consider all available foreclosure prevention tools, including but not limited to reinstatement, loan modification, forbearance, and short sales.
- ~~(3) In mediation, unless otherwise prohibited by applicable non-bankruptcy law or waived by the debtor, the parties must address proof of ownership of the note and any transfers of the note; and calculation of the sums due on the note for the principal, interest, and costs or fees.~~
- ~~(4)~~(3) In mediation, where the creditor claims that a pooling and servicing or other similar agreement prohibits modification, the creditor must produce a copy of the agreement. All agreement documents are confidential and are not to be included in the mediator's report.
- ~~(5)~~(4) The following persons must participate in any mediation conducted under this Rule:
 - (A) the creditor, or a person designated by the creditor or its servicer, who
 - (i) has authority to agree to a proposed settlement, loan modification, or pursuit of lift stay relief; and
 - (ii) has real-time access during the mediation to the creditor's account information and to the records relating to consideration of the options available;
 - (B) counsel for the creditor, if any;
 - (C) the debtor and counsel for the debtor, if any; and
 - (D) the Court-appointed mediator.
- ~~(6)~~(5) The case trustee and holders of other liens on the subject property may also participate, subject to the mediator's approval.
- ~~(7)~~(6) The mediator, in the exercise of his or her discretion, may permit any party or attorney to participate in mediation by telephone or through video conferencing.
- ~~(8)~~(7) All mediations conducted under this Rule will take place in a mutually convenient location, as determined by the mediator.

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font: 14 pt, Font color: Auto, Not Small caps

Formatted: Font: 12 pt, Font color: Auto, Small caps

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

(c) Time Frame for the Mortgage Mediation Process.

(1) A debtor-mortgagor or creditor-mortgagee may file a motion for mediation (Vt. LB MM Form #1) that seeks an order directing the parties to engage in mediation, in compliance with the following procedures:

(A) the movant must serve the motion on 14 days' notice to all creditors who would claim an interest in the property and the case trustee, along with a notice of motion regarding the motion for mortgage mediation (Vt. LB MM Form #2), and may use the default procedure;

(B) in the motion, the movant must specify why mediation would be helpful/useful to the parties and how it would benefit the estate;

(C) any objection to the motion must specify why mediation is not appropriate, or not likely to be productive or useful to the parties or likely to be of benefit to the estate;

(D) if the motion is granted, the Clerk will promptly after entry of the enter a mediation order (Vt. LB MM Form # 3); and then

(i) the Clerk will forthwith send the parties a list of all Bankruptcy Court approved mediators, and;

(ii) within seven days of the creditor's participation in the case, evidenced by the earlier of:

(aa) the creditor-mortgagee's filing of a proof of claim in the case;

(bb) the creditor-mortgagee appearing by counsel in the case, or

(cc) an individual creditor-mortgagee's appearing either by counsel or pro se, the parties to the mediation shall may stipulate to the selection of a mediator; and

(iii) neither party shall file a notice of selection of a mediator prior to the creditor-mortgagee's participation in the case (as defined in (ii) above).

(E) if the parties are unable to agree on a mediator within seven days of the issuance of the notice, as outlined in part (D), the debtor shall file a motion asking the Court to designate a mediator; and

(F) the mediator the parties select will be deemed appointed on the date the parties file the list identifying the mediator they have selected, unless the Court orders otherwise.

~~(2) Within 21 days of entry of the mediation order (Vt. LB MM Form #3):~~

~~(2) Within 14 days of the appointment of the mediator, the parties are strongly encouraged to file a stipulated proposed scheduling order (on Vt. LB MM Form # 13). If the parties fail to file VTB MM Form # 13 within 14 days, the mediation shall proceed pursuant to the deadlines described below.~~

~~(3) Within 21 days of the appointment of the mediator:~~

~~(A) the debtor must serve on the mediator and the creditor all documents set forth on the mediation document list, with the complete loan number set forth on the top right of each page, along with a notice of compliance (Vt. LB MM Form #5) with the mediation order, and file with the Court a copy of the notice (without attachments) and a certificate of service; and~~

~~each page, along with a notice of compliance (Vt. LB MM Form #5) with the mediation order, and file a copy of the notice (without attachments) and a certificate of service with the Court; and~~

~~(B) if the debtor determines that he or she cannot proceed with mediation until the debtor has certain information from the creditor, the debtor must serve on the creditor and the mediator a demand for documents from the creditor (Vt. LB MM Form #9) that identifies the documents the debtor needs from the creditor (e.g., copy of the promissory note, copy of the loan history) and why, and file with the Court a copy of the demand for creditor documents with the Court.~~

~~(34) For purposes of serving these documents, and whenever the debtor is required to serve the creditor under this Rule, the debtor must serve the creditor at the address set forth on the creditor's proof of claim in this case, or the address on record with the Clerk for such purposes. If the creditor has not filed a proof of claim in this case or given the Clerk a preferred service address, the debtor must~~

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Left: 1.5", First line: 0"

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Indent: Hanging: 0.5"

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

serve the creditor by serving the attorney who represents the creditor in a pending foreclosure action against the subject property. If there is no foreclosure action pending and no other address on record, the debtor must serve the creditor as required by Fed. R. Bankr. P. 7004.

~~(4)~~(5) Within 45 days of the appointment of the mediator, the mediator must hold a pre-mediation telephonic conference to help the debtor and creditor identify any missing documents, expedite exchange of any necessary documents, and address any impediments to moving forward or other pre-mediation issues. At the pre-mediation telephone conference, the mediator must, at a minimum, record the status of the parties' efforts, the progress the mortgagee and mortgagor have made on the production and exchange of financial documents, any review of information that occurs during the conference, any request for additional information, the anticipated time frame for submission of any additional information and the lender's review of the information, and the scheduling of the mediation session. The mediator may require the lender's representative to participate in the pre-mediation telephone conference, and any other meetings the mediator deems appropriate in order to expeditiously conclude the mediation process.

(6) Within 21 days of the date the debtor filed the notice of compliance (Vt. LB MM Form #5):

- (A) the creditor must serve the debtor and the mediator with a creditor's response to the adequacy of the debtor's mediation documents (Vt. LB MM Form #8) and file the same with the Court, with a certificate of service; or
- (B) if the creditor finds the documents from the debtor to be incomplete, finds the debtor has not served all documents articulated on the list, or determines additional documents are necessary in this particular case, the creditor may file a motion to compel compliance with the mediation order (Vt. LB MM Form #4) in lieu of the response; and
- (C) if the debtor files a demand for documents from the creditor (Vt. LB MM Form #9), the creditor must serve the documents requested by the debtor on the debtor and mediator, along with a response to the demand for creditor documents, and file a copy of the response (without attachments) and a certificate of service with the Court.

~~(5)~~(7) If the creditor serves a motion to compel compliance with the mediation order (Vt. LB MM Form #4), the debtor will have 14 days to file a response with any documents required to bring the debtor into compliance with the mediation order. A motion to compel is a non-routine motion for ~~purpose~~purposes of this Rule. Cf. Vt. LBR 9013-2(b), (c)(5)(C). The creditor may set a hearing thereon, to be held shortly after the expiration of the debtors' response time; if the creditor does not set a hearing, the Court will do so if it deems a hearing necessary.

~~(6)~~(8) The mediator must schedule the mediation session to be held within 21 days of the filing of the creditor's response, or of an order adjudicating the motion if the creditor files a motion in lieu of the creditor's response, whichever is later. The first mediation session must be held within 90 days of the ~~date~~selection of the ~~Court enters the mediation order~~mediator, unless the Court ~~approves~~grants a motion to enlarge the time. The mediation must conclude within 14 days of the first mediation session, unless the mediator determines there is good cause to extend the mediation period. The mediators shall have broad discretion and authority to manage the mediation process, including the authority to enlarge the 90-day time period between ~~entry~~selection of the ~~mediation order~~mediator and the convening of the first mediation session, provided the mediator files (A) a statement setting forth the basis for enlarging this time period and (B) a precise and firm schedule for commencing and completing the mediation. ~~The mediator is encouraged and authorized to schedule a pre-mediation telephone conference in order to ascertain the status of the document exchange between the parties, assist in resolving any outstanding issues, address any impediments to moving forward, and schedule the mediation session as soon as possible. The mediator may also require the lender's representative to participate in the pre-mediation telephone conference and any other meetings necessary to expeditiously conclude the mediation process.~~

~~(7)~~(9) If a modification is denied, the creditor must provide a written explanation at the time of denial as to why a modification is not available (including any input figures used in calculating eligibility for a modification). If the debtor believes the creditor denied the modification in bad faith, or reached a conclusion on the basis of erroneous facts or calculations, the debtor may file,

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

within 14 days of the conclusion of the mediation, a motion to compel the creditor to participate in further mediation.

(10) The mediator must file a report of mediation (Vt. LB MM Form #6) within 14 days of the conclusion of the mediation. In lieu of Vt. LB MM Form # 6, the mediator may file a Vermont Foreclosure Mediation Report, as described in 12 V.S.A. § 4634.

Formatted: Font color: Auto

Formatted: Font color: Auto

(11) Unless

(A) the mediator files a statement and schedule, or a report (or interim report, Vt. LB MM Form # 12) of mediation, or

(B) the debtor files a stipulation between the debtor, creditor, and mediator deferring mediation due to a temporary payment plan, within 120 days of the date the mediator was selected the Clerk shall set a status hearing for the next hearing date, at which the parties' representative and the mediator shall be required to appear and explain why the mediation has not been completed.

Formatted: Font color: Auto

(d) Required Documents. ~~To mediate~~ Unless waived by the creditor, to engage in mediation, the debtor must deliver the following documents to the creditor and mediator:

Formatted: Font color: Auto

Formatted: Font color: Auto

(1) a request for modification and affidavit or an alternative, analogous form required by the creditor;

(2) an IRS Form 4506T (with § 5 left blank);

(3) a fully completed financial worksheet for loan modification (Vt. LB MM Form #10) with all supporting information required by the worksheet;

(4) the two most recent bank statements for each account on which the debtor is a signatory (all pages; no computer printouts);

(5) the two most recently filed federal tax returns with affidavit affirming that the debtor has signed them and that these are true and correct copies of what the debtor has filed;

(6) a copy of the Schedules I & J filed with the bankruptcy petition, and, if the bankruptcy case has been pending more than 60 days, amended Schedules I & J showing income and expenses as of the date of the motion for mediation;

(7) a Dodd-Frank Certification;

(8) a debtor's hardship letter (Vt. LB MM Form #7, or the hardship form required by the creditor, if any) specifying the circumstances pertinent to the debtor;

(9) the debtor's two most recent electric utility ~~bill~~ bills;

Formatted: Font color: Auto

Formatted: Font color: Auto

(10) the debtor's current property tax bill;

Formatted: Font color: Auto

(11) a copy of the debtor's current driver's license or a statement from the debtor affirming s/he does not have a driver's license;

(12) the debtor's homeowner's insurance declarations page;

Formatted: Font color: Auto

~~(13)~~ a contribution letter from each household member who ~~is,~~ though not liable on the loan, ~~but~~ has been contributing to loan payments, specifying the amount of any continuing contribution, along with other income information from that person and his or her consent to any credit check required by the creditor;

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

~~(14)~~ the debtor's payment advices representing the most recent consecutive 30-day period;

Formatted: Font color: Auto

~~(15)~~ if the debtor is self-employed, profit and loss statements for the last two quarters and for the year to date, and the most recent four months of business bank statements (all pages; no computer printouts);

Formatted: Font color: Auto

~~(16)~~ if the debtor receives social security, disability, pension, or other public assistance benefits, the award letter and the most recent benefit statement;

Formatted: Font color: Auto

~~(17)~~ if the debtor owns real property that the debtor rents, including rental of part of the property subject to the mediated mortgage, a copy of the current rental agreements (or an affidavit describing lease terms), a listing of monthly rental income, and two months' canceled rent checks;

Formatted: Font color: Auto

~~(18)~~ if the debtor is divorced, a copy of all divorce decrees and all separation agreements signed by the debtor in the past eight years, and a copy of any quitclaim deed to the occupant spouse;

Formatted: Font color: Auto

~~(19)~~ a statement describing any alimony and/or child support award paid to the debtor, if the debtor wishes to have that income considered; and

Formatted: Font color: Auto

(1920) a statement articulating whether the debtor is a member of a homeowners' association.

Formatted: Font color: Auto

(e) Cost of Mediation.

Formatted: Font: Not Bold, Font color: Auto

(1) The mediator is entitled to a flat fee of ~~\$750 per mediation~~ 900 per mediation. This fee covers all services of the mediator, including but not limited to the pre-mediation telephone conference(s), communications with the parties, the filing of an interim and final report, and conduct of the mediation session(s).

Formatted: Font color: Auto

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Font color: Auto

(2) The fee for the mediator will be split equally among the parties to the mediation, except that the case trustee ~~is excluded from this allocation of expenses~~ shall not be required to pay any portion of the mediator's fee, even if he participates.

Formatted: Font color: Auto

(3) If ~~at the mediator or either~~ party seeks any of the following relief, ~~the party that person~~ must file a motion with the Court, on 14 days' notice to all parties to the mediation and the case trustee, showing cause for such relief:

Formatted: Font color: Auto

Formatted: Font color: Auto

Formatted: Font color: Auto

(A) a different ~~mediation fee amount~~ for the mediator;

Formatted: Font color: Auto

(B) a different allocation of the mediator's fee; or

Formatted: Font color: Auto

(C) an assessment of costs against a party to the mediation.

(4) An application for any of these forms of relief must:

(A) show good cause for the relief sought, ~~include~~ including an explanation of the circumstances giving rise to the application;

Formatted: Font color: Auto

(B) be on notice to all parties to the mediation plus the case trustee; and

(C) include a specific breakdown of the time spent, any costs incurred, and a computation of the amount sought.

(f) Post-Mediation Requirements and Obligations.

(1) Within 14 days of the conclusion of the mediation, the mediator must file a report of mediation (Vt. LB MM Form #6) that:

(A) sets out the names and addresses of all persons who attended the mediation session(s), identifying ~~the~~ each person's role in the mediation, and ~~specifically identifying~~ the specifying which representative of each party ~~who~~ had decision-making authority;

Formatted: Font color: Auto

Formatted: Font color: Auto

(B) ~~a statement as to~~ states whether any person required to participate in mediation failed to

Formatted: Font color: Auto

(i) attend the mediation,

Formatted: Font color: Auto

(ii) make a good faith effort to mediate, ~~or~~

Formatted: Font color: Auto

(iii) timely supply documentation, information, or ~~any input figures necessary to the mediation, or~~

Formatted: Font color: Auto

Formatted: Font color: Auto

(iv) timely supply responses, information, or data requested by the mediator;

Formatted: Indent: Left: 1", Hanging: 0.5"

(C) ~~a summary of~~ summarizes the results of the mediation, stating whether full or partial settlement was reached and appending any agreement of the parties, if available; and

Formatted: Font color: Auto

Formatted: Font color: Auto

(D) if the mediation failed because a party (or parties) failed to follow through on a proposal or an instruction from the mediator, describes those circumstances.

(2) Within 14 days of the filing of the report of mediation, the party who filed the motion for mediation (Vt. LB MM Form #1) must file a post-mediation motion or stipulation, with a proposed order declaring mediation closed (Vt. LB MM Form #11), seeking entry of an order that:

(A) finds that the parties have had a full opportunity to mediate the subject mortgage;

(B) states whether the mediation proceeded in good faith;

(C) states whether an agreement was reached; and

(D) sets a status hearing for a date shortly after the conclusion of any trial modification period, or establishes a scheduled next step necessary to move the case forward.

(g) Preclusion on Mediator Testifying. No mediator will be required to testify in any action relating to any mortgage or debt at issue in a mediation conducted pursuant to this Rule.

Formatted: Indent: Left: 0", Hanging: 0.5"

Formatted: Font: Bold, Font color: Auto

Formatted: Font color: Auto

(h) Criteria for Eligibility as a Mediator in Bankruptcy Court Mortgage Mediations. In order to be

Formatted: Font color: Auto

on the panel of approved bankruptcy mediators, an attorney must meet the minimum certification requirements of the [Vermont](#) state court mediation program and have significant bankruptcy experience.

(i) Retention of Jurisdiction. This Court retains jurisdiction to interpret and enforce any agreement reached through mortgage mediation conducted pursuant to this Rule [or in a bankruptcy case in this District](#).

- Formatted: Font: Bold, Font color: Auto
- Formatted: Font color: Auto
- Formatted: Font color: Auto
- Formatted: Font color: Auto
- Formatted: Indent: Left: 0", Hanging: 0.5"
- Formatted: Font color: Auto
- Formatted: Font color: Auto
- Formatted: Indent: Left: 0", Hanging: 0.5"
- Formatted: Font color: Auto