

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**

In re:

**VERMONT JUDICIARY FORECLOSURE
MEDIATION PROGRAM; IMPACT ON
BANKRUPTCY CASES AND DISCHARGE;
APPLICABILITY OF AUTOMATIC STAY**

STANDING ORDER # 10-01

On May 29, 2010, the State of Vermont enacted an Act Relating to Mediation in Foreclosure Proceedings (Vermont H.590) (the “Act”). Section 4 of the Act establishes a mediation program in foreclosure proceedings (the “Mediation”), effective July 1, 2010 (12 V.S.A. chapter 163, subchapter 9, 12 V.S.A. §§ 4701 et seq.). The Act may have an effect on pending and future bankruptcy cases, and may be affected by the automatic stay and discharge provisions of the Bankruptcy Code (Title 11 U.S.C.).

In order to encourage negotiation and mediation between mortgagors and mortgagees (the “Parties”), toward the end of allowing debtors to retain their residences and mortgage creditors to be paid, and to advance judicial efficiency and reduce costs, the following principles will apply when a mortgagor-debtor who is a party to a State Court foreclosure proceeding files for bankruptcy relief in this Court.


1. A mortgagee-creditor is not required to obtain relief from the automatic stay of actions and proceedings against the mortgagor-debtor under § 362(a) of the Bankruptcy Code (the “Automatic Stay”) in order to continue the Mediation after the date on which the mortgagor-debtor files a petition for bankruptcy relief (the “Petition Date”).
2. A mortgagee-creditor who continues the Mediation with a mortgagor-debtor who has a pending bankruptcy case shall not be deemed to have violated the Automatic Stay solely by virtue of that continued Mediation.
3. The Parties are not required to continue the Mediation after the Petition Date, but they may agree to do so, and either Party may move to invoke the Act in order to commence or continue the Mediation, within fourteen (14) days after the Petition Date. To obtain an order directing Mediation, the movant must show cause based upon the best interest of creditors and eligibility under the Act, must serve notice on all parties in interest, and may use the default procedure.
4. If the Parties agree to continue the Mediation, the mortgagor-debtor must, within fourteen (14) days of the Petition Date, file with the Clerk of the Bankruptcy Court a document captioned as a “Notice of Participation in State Court Mediation” in the mortgagor-debtor’s bankruptcy case, and attach to that Notice a copy of the State Court order referring the Parties to Mediation.
5. If the Parties agree to continue the Mediation after the Petition Date, or this Court grants a motion directing the Mediation to proceed, this Court shall have jurisdiction over any issues that arise

concerning the Mediation, and the terms of the Act shall govern the conduct of the Mediation.

6. If the Mediation proceeds in this Court, whether by the Parties' agreement or by order of this Court, the mortgagor-debtor shall
 - a. file with the Clerk of the Bankruptcy Court any documents the Act requires be filed with the State Court in connection with the Mediation;
 - b. file with the Clerk of the Bankruptcy Court, within fourteen (14) days of the conclusion of the Mediation, a document captioned as a "Notice of Mediation Conclusion" in the mortgagor-debtor's bankruptcy case, and attach to that Notice a copy of the Mediation Report required by 12 V.S.A. § 4704(a); and
 - c. serve a copy of that Notice on the Office of the Attorney General of Vermont.
7. If the Parties' participation in the Mediation results in a settlement or other consensual arrangement that modifies the terms of the mortgage during the time the mortgagor-debtor has an open bankruptcy case, to which the automatic stay applies, the Parties must seek Bankruptcy Court approval of the resolution by motion, on notice to all parties who have a lien on the property, the case trustee, and all other parties in interest.
8. If the approved resolution conflicts with the terms of a confirmed Chapter 13 plan, the mortgagor-debtor must file a motion to modify the plan within fourteen (14) days of the approval order.
9. Unless the Court orders otherwise, the Clerk of the Bankruptcy Court shall not enter a discharge order prior to
 - a. this Court's entry of an order approving the resolution (if the Parties reach a resolution); or
 - b. the filing of the Notice of Mediation Conclusion (if the Parties do not reach a resolution).
10. Unless the Court orders otherwise, the mortgagor-debtor in a Chapter 13 bankruptcy case must continue to comply with all obligations of the Bankruptcy Code during the Mediation, including the duties to make regular monthly mortgage payments to the mortgagee-creditor and to make the required plan payments to the Chapter 13 Trustee.
11. Nothing in this Order modifies the mortgagee-creditor's duty to comply with the Bankruptcy Code or authorizes the mortgagee-creditor to continue its foreclosure proceeding without a relief from stay order, except with respect to continuation of the Mediation.
12. A State Court's waiver of the Parties' duty to participate in Mediation under 12 V.S.A. § 4702(a) shall not be binding on this Court or preclude the Parties from engaging in any mediation that the Parties or this Court deem appropriate within the context of the bankruptcy case.

SO ORDERED.

July 16, 2010
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge