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SLG Client Alert: ~~To all~~ SLG Clients and Affiliates.

From: Spencer Scheer

**MORTGAGE MODIFICATION MEDIATION PROGRAM
(N. District of California)**

Overview: Effective August 1, 2105, the Northern District of California has implemented a Mortgage Modification Mediation program (“MMM”). The MMM is available for all open and active Chapter 13 cases. The MMM procedures and forms are posted on the N. District Court website. Participants will be required to utilize specified court authorized software and to submit a required MMM package through an MMM website portal maintained by the court. The forms for the program can be found at: <http://www.canb.uscourts.gov/search/node/MMM%20program>

The MMM program is based on a similar program that has been implemented in Florida. In essence, upon submitting a proper MMM application an applicant (can be a lender as well as a debtor) can submit an ex parte motion referring the application to the MMM Program and (unless successfully opposed based on overriding legal considerations e.g. repeat filings (See note below)) the participants will be required to participate in a court supervised mediation program to determine if a temporary or permanent loan modification will be granted and under what terms and conditions. Parties are required to attend all scheduled MMM conferences and be authorized to settle all matters. While certain protections of the lender’s interest on any effected loan is provided for, the ability of a lender to obtain relief from stay is dependent in part on the status and circumstances surrounding any MMM that is in process and any lender seeking relief from stay prior to conclusion of the MMM process will have to show why relief is warranted. Debtors and their counsel are required to act and participate in good faith and the failure to do so can result in revocation of the order establishing mediation and can result in the imposition of sanctions.

Note: The MMM does not specifically address issues of what will happen if the Debtor initiates the MMM process after multiple filings or after a prior failed loan modification and the impact that this will have on the Debtor’s rights to proceed with MMM. The MMM clearly provides that referral of a matter to the MMM results in continuation or dropping all pending motions for relief and provides good cause to delay any decision on a pending motion for relief. Also, post-petition mortgage payments are to be made the Chapter 13 Trustee and not the Lender. If the loan modification mediation is not successful, it is likely that the payments will be returned to the debtor if the case is dismissed, unless the lender obtains adequate protection pursuant to an agreement. These and other related considerations must be considered by Lenders and their counsel.

Note: Lenders should prepare and register now!! Lenders are required to register on the MMM Portal within 14 days after entry of an order referring a borrower to the MMM program. You can upload your intake package prospectively and once you upload your template it is done. The following Chart contains an overview of the requirements of the **MMM Procedures**.

NOTE and DISCLAIMER: The following are general provisions designed to give you an overview of the issues and requirements of the MMM and the Mortgage Modification Mediation Program Procedures (**MMM Procedures**). The following is not a substitute for you or your legal counsel’s in-depth review of the specific provisions and any related bankruptcy code or case provisions or decisions that impact the MMM process.

Issue/Requirement	MMM Program Provisions
Required Parties Subject to MMM.	Debtor, Debtor’s attorney, Lender, Lenders’ CA legal counsel, co-debtor, co-borrower or third party obligor and the mediator. ¹
Mandatory Use of MMM Portal and Document Software.	<p>Court mandated use of online portal (“MMM Portal”), and online program to facilitate Debtor loan mod. package (“Document Prep. Software”). Unless otherwise permitted by the Court, all communications are to be sent exclusively through the MMM Portal.²</p> <p>Note: Any litigated matters incidental to the mediation are considered separate and not subject to these requirements e.g. motion to compel mediation, discovery motions etc., which are to be filed in the main case.</p>
Eligible Debtors and Requirements.	<p>Must be an individual debtor with pending BK case in N. Dist.; Must use the N. Dist. Model Chap. 13 Plan; must pay applicable fees (\$40.00 software fee, MMM Portal submission fee (\$40.00) and ½ of mediator fee (\$300.00); and determine that mort. Mod is feasible and that the Debtor has income to make a Chapter 13 plan payment that includes a modified mortgage payment (typically requirement to be 31 % of Debtor’s gross monthly income, or such other amount designated by the Lender.)³</p>
Referral to MMM Program	<p>Either Debtor or Lender can seek referral to the Program.</p> <ul style="list-style-type: none"> ➤ By Debtor: Complete software registration and pay fee and submit Debtor Prepared Package for lender review through the MMM Portal. Upon completion, Debtor may seek entry of order for referral to MMM by filing a Motion for Referral to MMM identifying the proposed mediator (Form ND-MMM-100). An Order granting the motion shall be lodged with the court and granted on an exparte basis.⁴ ➤ By Lender: Any Lender can seek entry of an order of

¹ MMM Program Procedures, ¶ 2.C.

² MMM Program Procedures, ¶ 3.

³ MMM Program Procedures, ¶4.

⁴ MMM Program Procedures, ¶ 5.A.

	<p>referral to the MMM by filing a motion that substantially conforms to the MMM forms, and must identify the proposed mediator.</p>
<p>Notice to be Provided Per Filing of Motion for Referral, in Order to Obtain Order of Referral to MMM.</p>	<ul style="list-style-type: none"> ➤ By Debtor with Lender Consent: If Debtor complies with all requirements in filing a Motion for Referral to MMM and has obtained the written consent of the Lender the Debtor is not required to file and serve a notice of opportunity for hearing pursuant to B.L.R. 9014-1(b) (3), provided the Debtor has filed a Notice of Lender's Consent to Attend and Participate in MMM (Form ND-NMM-101), with the motion.⁵ The Court will then issue the order. The Debtor will be required to serve a copy of the Order referring the case to MMM on the required parties and the Chapter 13 Trustee. ➤ By Debtor without Lender's Consent: If Debtor complies with all requirements in filing a Motion for Referral to MMM (See above), but has not obtained the written consent of the Lender, Debtor may still seek the issuance of an ex parte order, but shall do the following: <ul style="list-style-type: none"> ○ Debtor shall not be required to file and serve a notice of opportunity for hearing pursuant to B.L.R. 9014-19b(3), provided that Debtor provides Lender 14 days' notice of the right to seek reconsideration by filing and serving a Notice of Entry of Order Granting Motion for Referral to MMM (Form ND-MMM-104), after entry of the order. ○ In addition, Debtor shall serve a Notice of Entry of Order referring case to the MMM (Form ND-MMM-104), a copy of the order referring the case to the MMM (DN-MMM-103), a copy of the MMM Procedures, and a copy of the Objection to Selection of Mortgage Mediation Program Mediator (Form ND-MMM-105) on the required parties and the Chapter 13 Trustee.⁶ ➤ By Lender: Any Lender may seek entry of an order of referral to the MMM Program by filing a motion that substantially conforms to the MMM Forms. Lender may, but is not required to comply with B.L.R. 9013-1(b) (3), or B.L.R. 9013-1(d). Lender shall file and serve a notice and opportunity for hearing (B.L.R. 9014-1(b) (3), along with copies of the MMM Procedures, but may not seek entry of an order on an ex parte basis. If no interested party timely objects, the lender may lodge an order. If there is

⁵ MMM Program Procedures, ¶ 5A (iv).

⁶ MMM Program Procedures, ¶ 5A (iv) and (v).

	timely opposition, the Court will resolve the matter at hearing and issue an appropriate order. ⁷
Selection of Mediator and Objections.	The moving party will select a mediator. If not, the clerk of the court will randomly assign one from a list of mediators. If a non-moving party that does not consent objects to the selection, then within 14 days after service of notice of entry of the order referring the case to MMM, the non-moving party shall file and serve an Objection to Selection of Mediator (Form ND-MMM-105) and the Clerk shall select another mediator. ⁸
Additional Parties.	Debtor shall file a Notice of Third-Party Consent to Attend and Participate in MMM (Form ND-MMM-102) for each co-obligor or co-borrower that elects to participate in the MMM.
Service of Order of Referral to MMM and Debtor, Lender (and successor) and, Mediator Requirements.	<p>Upon entry of the order referring the case to MMM, the moving party shall serve a copy of the order on the required parties and the mediator, and must file a POS with the court.</p> <ul style="list-style-type: none"> ➤ <u>Debtor Requirements:</u> Within 7 days after entry of Order referring the case to the MMM Program or the Lender’s registration on the MMM Portal, <u>whichever is later,</u> Debtor shall upload to the MMM Portal: (i) the Debtor’s Prepared Package; (ii) copy of the order referring case to the MMM; (iii) all additional documents specified by the Lender on the MMM Portal. Debtor shall also designate the selected mediator and pay the required fees. Debtor and Debtor’s attorney required to act in good faith, including promptly responding. If not, the Court can issue sanctions including vacating the mediation order.⁹ ➤ <u>Lender Requirements:</u> Within <u>14 days</u> after entry of an order referring a case to the MMM, Lender and Lender’s counsel shall register on the MMM Portal (if not already registered). As part of the registration process, Lender shall provide the MMM Portal vendor all applicable initial mortgage modification requirements (“Lender Initial Package”) which will be posted on the portal. The Lender Initial Package shall have specific forms and documents necessary for Lender’s review. This is a one-time event and registration is not required for each case. <ul style="list-style-type: none"> ○ <u>Within 7 days</u> after Debtor submits a completed package, Lender must: (i) acknowledge receipt of the completed package; and (ii) designate a single point of contact, and outside legal counsel, if any, which shall have

⁷ MMM Program Procedures, ¶ 5B.

⁸ MMM Program Procedures, ¶ 6.

⁹ MMM Program Procedures, ¶ 8 B.

	<p>authority (within investor guidelines) to settle all issues at any MMM conference. Lender must then pay ½ the mediator’s fee (\$300) to the mediator. Lender and its counsel shall act in good faith, including promptly responding to inquiries. If a loan subject to MMM is transferred, the Lender must give prompt notice to a successor lender. The Debtor or Lender must transfer the submission on the MMM Portal to the successor.¹⁰</p> <p>➤ <u>Mediator Requirements:</u> Within 7 days after the Debtor has satisfied requirements, the mediator shall log into the MMM Portal to facilitate the exchange of information between Debtor and Lender. No later than 7 days after the Mediator has determined that the Lender has received all required information, the Mediator shall schedule the MMM Conference. In the event that the Mediator cannot make such a determination, the Mediator shall schedule the initial MMM conference within 90 days of entry of order referring the case to the MMM.¹¹</p>
<p>MMM Conference and Attendance Requirements.</p>	<p>The initial MMM Conference shall not exceed one hour. If no agreement reached, the mediator shall schedule a 2nd MMM Conference to be held no later than 30 days after the conclusion of the initial conference. The entire MMM Program shall be completed no later than 150 days after the entry of the order referring the case to the MMM. All parties attending must have authority to sign a binding agreement and to scan and send and received documents by email, fax or electronic means, as necessary.¹²</p> <p>➤ <u>Debtor Obligations:</u> Debtor and Debtor’s attorney (if there is one) and any co-borrower may participate by phone, provided they are physically present with Debtor’s attorney and present valid ID. If Debtor does not have an attorney then Debtor and any co-borrower shall be physically present at the mediator’s selected location. If needed, Debtor shall provide a foreign language interpreter.¹³</p> <p>➤ <u>Lender Obligations:</u> Lender’s designated representative and attorney may appear telephonically at all MMM Conferences.¹⁴</p>
<p>Post MMM Requirements and</p>	<p>Within 7 days after conclusion of the final MMM Conference, the mediator shall report the results to the Court on required</p>

¹⁰ MMM Program Procedures, ¶ 8 B.

¹¹ MMM Program Procedures, ¶ 8 C.

¹² MMM Program Procedures, ¶ 9 B and C.

¹³ MMM Program Procedures, ¶ 9A.

¹⁴ MMM Program Procedures, ¶ 9B.

<p>Procedure (Trial Mod and Permanent Mod):</p>	<p>forms.</p> <ul style="list-style-type: none"> ➤ Trial Loan Mod: If the parties reach a trial loan modification agreement then within 14 days after the parties reach the agreement, the Debtor shall file a Motion to Approve Trial Loan Mod. Agreement and authorize the Trustee to Make Distributions Prior to Confirmation (Form ND-MMM-106), and a proposed order (Form ND-MMM-107) to be lodged with the Court and approved by the Lender, which shall be on an ex parte basis. ➤ Final Loan Mod: If the parties reach a final loan modification agreement then within 14 days after the parties reach the agreement, the Debtor shall file a Motion to Approve Loan Mod. Agreement after Completion of MMM Program (Form ND-MMM-108), and a proposed order ((Form ND-MMM-109) to be lodged with the Court and approved by the Lender, which shall be on an ex parte basis.
<p>Impact on Chapter 13 Procedures.</p>	<ul style="list-style-type: none"> ➤ <u>Referral to MMM Before Confirmation of Plan:</u> <ul style="list-style-type: none"> • If a case has been referred to MMM and the Debtor requires the Trustee to make payments to the Lender prior to confirmation, the Debtor must serve an amended Chapter 13 plan with specific language required in Par. 11 C of the MMM Procedures. • If a case has been referred to MMM prior to confirmation of a Chapter 13 plan, the court will not confirm a plan until after the mediator has filed a Final Report, and if a final loan modification agreement is reached, until the Court has entered an Order Granting Motion to Approve Loan Modification.¹⁵ ➤ <u>Referral to MMM after Confirmation of Plan</u> <ul style="list-style-type: none"> • If Debtor seeks referral to MMM after Confirmation, the Debtor must file and serve a Motion to Modify the Chapter 13 Plan along with a proposed modified plan, that contains the with specific language required in Par. 11 C of the MMM Procedures.¹⁶ <p>Note: the required MMM Plan Confirmation Language, provides for:</p>

¹⁵ MMM Program Procedures, ¶ 11A.

¹⁶ MMM Program Procedures, ¶ 11B.

	<ul style="list-style-type: none"> • An estimated monthly modification payment that will be retained by the Trustee under any trial or permanent loan modification agreement, but is not to be released until the trial or final modification is approved by the Court. • That if the Debtor is unable to reach a final loan modification agreement, that the Debtor shall within 14 days after the Mediator files a Final Report, file an amended plan providing for proper repayment of pre-and post-petition arrearages or surrender of the Property, and that if an amended plan is not filed the Debtor will be in material default .¹⁷
<p>Impact of MMM on the Automatic Stay.</p>	<p>The MMM clearly provides that referral of a matter to the MMM results in continuation or dropping all pending motions for relief and provides good cause to delay any decision on a pending motion for relief. In addition, no exparte applications for relief from stay can be filed In addition, any lender seeking relief from stay must provide in the motion why relief is appropriate prior to the conclusion of the MMM.¹⁸</p> <p>Note: This is a critical consideration when there are multiple bankruptcies or a prior failed loan modification and the lender does not want to become involved in additional modification negotiations and wants to avoid additional delay resulting from being included in the MMM process.</p>
<p>Interim Mortgage Payments.</p>	<p>Also, post-petition mortgage payments are to be made the Chapter 13 Trustee and not the Lender. If the loan modification mediation is not successful, it is likely that the payments will be returned to the debtor if the case is dismissed, unless the lender obtains adequate protection pursuant to an agreement.¹⁹</p>

¹⁷ MMM Program Procedures, ¶ 11C.

¹⁸ MMM Program Procedures, ¶ 12A.

¹⁹ MMM Program Procedures, ¶ 12C.