

## **FLMB's Mortgage Modification Mediation Program Featured in Bloomberg**

By: Honorable Karen S. Jennemann and Danielle L. Merola

Bloomberg BNA Bankruptcy Law Reporter recently published an article praising this Court's Mortgage Modification Mediation Program (MMM). Author Daniel Gill mentioned the program is working well with a much higher success rate compared to the Florida state court foreclosure mediation programs. Some folks specifically deserve our thanks for the program's well-deserved nationwide praise, particularly the Orlando Chapter 13 Trustee's office, Tammy Branson, Bob Branson, and Liz McCausland. We spoke with each of these folks to get their take on the why our MMM program succeeded where others flounder.

**Steve Wood** from the Chapter 13 Trustee's office reports that since the start of the program in 2010, close to 4,000 loans have been successfully modified in Orlando. As of March 2018, about 67% of completed mediations have succeeded.

The Court's MMM program was born during the great recession starting in 2007. Debtors were coming to bankruptcy court and asking for continuances because they were still in a temporary loan modification and trying to negotiate a final modification with their lenders. **Liz McCausland**, a frequent mediator and President of the Orange County Bar Association, recalled that one debtor was in a trial modification program for a year, but he could not secure a permanent loan modification. He needed a more effective system. **Laurie Weatherford**, the Chapter 13 Trustee in the Orlando Division, remembers one specific confirmation hearing in 2009 that inspired the creation of the MMM program. After months of complying with all the requirements of a temporary loan modification, the Debtor was refused a permanent modification for no logical reason. Everyone involved in the Chapter 13 process was frustrated. One of our local creditor lawyers, **Lorne Durket**, mentioned the program in state court where parties mediated loan modifications and suggested that our bankruptcy bar revise it to make it more effective in bankruptcy.

After that confirmation hearing, the Chapter 13 Trustee's office and a group of attorneys got together and worked on a solution. The goal was to have all interests represented—creditors, debtors, the Chapter 13 Trustee, and mediators. These people worked hard, brainstormed ideas, and developed initial procedures. The Court's first form Order Directing MMM was created in 2010, but the Order has gone through many changes over the years to address problems and issues encountered in implementing the program. Chapter 13 Trustee attorney **Ana De Villiers** recalled that one of the biggest changes (and improvements) was when the Order was amended to provide that someone with authority to settle, be at the mediation. Now, Debtors could not be denied a loan modification without understanding the reason.

The Chapter 13 Trustee's office also sponsored several intense trainings during the beginning stages of the program to teach practitioners how to do loan modifications. Others paid attention.

The cost of the program is low, and the success rate is high. Communication is key to the program's success. **Tammy and Bob Branson**, who help Debtors through the MMM process and who provide seminars on the program across the country, told us that one of the greatest achievements of the program is that debtors are told exactly *why* they are denied a loan modification. Sometimes debtors can make changes based on the reasons provided, and then the loan modification succeeds.

This success is largely because of the open dialogue in the portal. When the portal was instituted, it streamlined the process. Debtors can upload the documentation to the portal, and banks have easy access to the information in one central location. There is also a record of what debtors provide. Other mediation programs still operate in paper, and a ton of clerical work may lead to problems. Liz McCausland and Ana De Villiers told us they had to fax documentation late at night because banks required that borrowers fax paperwork, and the one provided fax number was constantly busy. The portals eliminate those issues. Parties can get results faster. And lenders cannot "lose" the paperwork!

The mediation also is confidential and takes place away from the Court. Tammy Branson tells us that parties can talk more openly and directly because of this confidentiality. Although HAMP expired December 2016, the Bransons tell us that many banks are offering in house modification programs that mirror the HAMP guidelines. Even lenders now embrace the program, which is demonstrated by the high success rate.

In 2014, Orlando hosted a state wide summit on MMM inviting lenders across the country, all the bankruptcy judges in Florida, and many mediators and lawyers. Later, a nationwide summit on MMM was also held. Liz McCausland tells us that although there is still no nationwide uniformity, other courts have shown a great interest in the Middle District's MMM program. And Florida has become mostly uniform in MMM.

Many thanks to all parties involved that made the Court's program a success and a model for other courts across the country.

The Bloomberg article can be read here:

Daniel Gill, *Orlando's Mortgage Mediation Program a Success, Model for Others*, Feb. 1, 2018.

Link: <https://www.bloomberglaw.com/document/XBB6GNN0000000?emc=bnabky:1>

Other articles of interest:

*Guiding Principles for the Future of Loss Mitigation: How the Lessons Learned from the Financial Crisis Can Influence the Path Forward*, White Paper prepared by the U.S. Department of the Treasury with the U.S. Department of Housing and Urban Development and the Federal Housing Finance Agency, July 25, 2016. Link: <https://www.treasury.gov/press-center/press-releases/Documents/guiding-principles-future-of-loss-mitigation.pdf>

Daniel Gill, *Bankruptcy Court's Mortgage Mediation Program a Success*, Feb. 24, 2017. Link: <https://www.bna.com/bankruptcy-courts-mortgage-n57982084348/>

Christopher S. Baxter & Bryan J.K. Sisto, *The Southern District of Ohio Looks to Florida's Example While Considering Whether to Implement Mortgage Modification Mediation*, American Bankruptcy Institute, July 19, 2016. Link: <https://www.abi.org/committee-post/the-southern-district-of-ohio-looks-to-florida%E2%80%99s-example-while-considering-whether-to>