SUGGESTED LMM CONSIDERATIONS
(April 1, 2013)

A. Prior to Filing the Verified Motion

1. When did the debtor file bankruptcy?
   a. The verified motion must be filed before Sept 30, 2013 for cases filed before April 1, 2013.
   b. The verified motion must be filed within 45 days for cases filed after April 1, 2013.
   c. Does the attorney need to file a motion to request a referral out of time?

2. What chapter has the debtor filed under and what is the debtor's intention regarding real property?
   a. Chapter 7: surrender any real property
   b. Chapter 11: modify or surrender homestead property
   c. Chapter 12: modify or surrender homestead property
   d. Chapter 13: modify or surrender any real property

3. Does the property consist of 4 units or less?

4. Has debtor's counsel determined who holds the note and mortgage and who services the loan?

5. How many co-obligors/co-borrowers/third parties are obligated on the note and/or mortgage?
   a. Will the co-obligors/co-borrowers/third parties sign the consent to participate in LMM?
   b. Are the co-obligors/co-borrowers/third parties represented by counsel?

6. Has debtor's counsel asked the lender to file the consent to participate in LMM?

7. Has debtor's counsel visited the portal to determine if the lender is registered?
   a. If the lender is registered, is debtor's counsel prepared to upload the forms and documents from docUmods to the portal within 7 days of the order?
   b. If the lender is not registered on the portal, has debtor's counsel contacted the lender and suggested the lender register?
   c. If the lender is not registered on the portal, is debtor's counsel prepared to upload the forms and documents from docUmods to the portal within 7 days of the lender's registration?

8. Has debtor's counsel visited the portal to determine what forms and documents the lender requires?

9. Has debtor's counsel gathered all required information to complete the forms and documents?

10. Has debtor's counsel collected the $65.00 portal fees ($40 docUmods fee and $25 registration fee)?

11. Has debtor’s counsel collected the $300 mediator’s fee?

12. Has debtor’s counsel selected a mediator either from the clerk’s list or someone who meets the qualifications for mediators in the Southern District of Florida?

13. Has the debtor agreed to the lender communicating directly with debtor’s counsel?

14. Is debtor’s counsel aware that all communication between the debtor, lender and mediator may be sent through the portal?

15. Is debtor’s counsel aware that the court and the trustee cannot access information from the portal and that all communication exchanged on the portal is confidential unless otherwise agreed?

B. <u>Verified Motion</u>

1. Have the co-obligors/co-borrowers/third parties signed consents to attend and participate in LMM?

2. Is debtor’s counsel aware that the negative notice provision is shortened to 14 days?

3. Has debtor’s counsel checked all relevant options included in the verified motion?
    a. Will the debtor consider surrender if a modification is questionable?
    b. Has the debtor included principle reduction in “other”?

4. Has debtor’s counsel remitted the docUmods fee to DMM and uploaded the documents to docUmods prior to filing the verified motion?

5. Has debtor’s counsel emailed a copy of the verified motion to the selected mediator?

6. Has debtor’s counsel properly served the verified motion?

7. Has the lender filed consent to participate in LMM?

C. <u>After the Verified Motion Has Been Filed</u>

1. Has the lender filed a written response to the verified motion within 14 days?

2. Has debtor’s counsel filed a certificate of no response within 7 days thereafter?

3. Has lender’s counsel objected to the verified motion?
    a. Has debtor’s counsel filed a certificate of contested matter and set it for hearing?
    b. Is the lender only objecting to the selection of the mediator and did the lender file the request for the clerk to designate a mediator?

4. Has debtor's counsel submitted the form order?

5. Has debtor's counsel gathered updated documents from the debtor and uploaded them to docUmods to avoid "staleness"?

D. <u>After the Order Has Been Entered</u>

1. Has debtor's counsel served the signed order upon the parties and filed the certificate of service?

2. Has debtor's counsel uploaded the signed order to the portal and emailed a copy to the mediator?

3. Has debtor's counsel designated the mediator on the portal?

4. If not already registered, has the lender registered on the portal within 7 days of the order?

5. Has the lender designated an attorney on the portal?

6. Has debtor's counsel printed and updated the documents submitted to docUmods, has the debtor signed them, and have they been scanned and uploaded to the portal within 7 days of the order or the lender's registration?

7. Has debtor's counsel remitted the $25 portal registration fee to DMM within 7 days of the order or lender's registration?

8. Has debtor's counsel remitted the mediator's $300 fee directly to the mediator within 7 days of the order?

9. Has the lender remitted the mediator's $300 fee directly to the mediator within 7 days of the order?

10. Has the mediator logged onto the portal within 7 days of the order and begun to facilitate the exchange of documents?

11. Has the lender requested additional documentation within 7 days of the order through the portal?

12. Has debtor's counsel provided the additional information within 7 days of the lender's request through the portal?

13. Has the mediator scheduled the first one-hour mediation conference on the portal within 60 days of the order?

14. Are the debtor and all co-obligors/co-borrowers/third parties attending the mediation conference in person and are prepared to present identification to debtor's counsel?

15. Are all parties ready, willing and able to sign a binding settlement agreement?

16. Does debtor's counsel need to provide a foreign language interpreter at the debtor's sole expense?

17. Has the initial mediation conference concluded or does the mediator need to schedule a final one-hour conference on the portal within 30 days of the initial mediation conference?

18. Has the mediator uploaded a final report to the portal no later than 7 days after the conclusion of the mediation conference(s) and filed it with the court no later than 2 days thereafter?

19. If the parties have settled:
    a. Has debtor's counsel filed the motion to approve the LMM agreement by negative notice within 14 days following the mediator's final report, with the agreement attached to the motion?
    b. Has debtor's counsel amended or modified the chapter 13 plan to reflect the agreement?

20. If the parties have not settled:
    a. Has debtor's counsel amended or modified the chapter 13 plan according to the required plan language?
    b. Will the debtor consider surrendering the property if a request for mortgage modification has been denied and the debtor did not originally include the surrender option in the verified motion?

21. Has LMM been concluded within 150 days of the order or has it been extended by motion and order?

E. <u>Chapter 13 plan/modified plan considerations in the Broward/West Palm Beach Divisions</u>

1. Has debtor's counsel included "LMM" in the title of all plans?

2. Has debtor's counsel included the court's required language in the plan?

3. Has debtor's counsel properly labeled the plan payments?
    a. LMM (estimated plan payments prior to settlement),
    b. TPP (agreed upon plan payments after settlement), and
    c. PMM (agreed upon permanent plan payments after loan modification is completed).

4. Has debtor's counsel charged an LMM fee of $1,800 or less?
    a. Has debtor's counsel filed the motion to refer to LMM?
    b. Does the initial plan include attorney's fees in the amount of $900 for services rendered prior to the mediator setting the initial mediation conference?

c. Has debtor's counsel amended or modified the plan to include the remaining $900 after the mediator has scheduled the initial mediation conference?
d. Has debtor's counsel listed all attorney's fees separately in the plan?
e. Does debtor's counsel need to amend the 2016(b)?
f. Does debtor's counsel need to file a fee application for fees charged in excess of the allowed amounts?

5. Does debtor's counsel have procedures in place to email the trustee before the twenty-fifth day of each of the three months prior to TPP payments requesting early disbursements?
    a. Does debtor's counsel have procedures in place to review the trustee's ledger sheet to determine whether the debtor is current before the twenty-fifth day of each of the three months prior to TPP disbursements?
    b. Has debtor's counsel informed the debtor that the trustee will only make TPP payments early if the debtor is current before the twenty-fifth day of each of the three months prior to the TPP disbursements?
    c. Has debtor's counsel informed the debtor that the trustee will disburse TPP payments in accordance with the trustee's customary monthly disbursement procedures and not early if the debtor is not current before the twenty-fifth day of each of the three months prior to the TPP disbursements?
    d. Does the debtor understand TPP payments must be received by the trustee before the twenty-fifth day of each of the three months prior to the TPP disbursements or a permanent loan modification may be denied?

6. Has debtor's counsel considered the following prior to filing a motion to modify a confirmed plan?
    a. Was the lender relieved from the automatic stay after confirmation of the original plan and not required to participate in LMM?
        i. Did debtor's counsel ask the lender to consent to LMM?
        ii. Should the debtor take a dismissal and re-file, considering the risks of dismissing the case?
    b. Was the debtor attempting to cure an arrearage in the confirmed plan?
        i. Should the debtor modify or take a dismissal and re-file, considering the risks of dismissing the case?
        ii. Has the debtor considered risks such as increased property values, elimination of crammed or stripped mortgages, and increased arrearage if mortgage modification is denied.
    c. Should the debtor file a motion to refer to LMM and modify the plan after the parties have settled?
        i. All creditors, including the lender (if applicable), will continue to be paid according to the confirmed plan.
        ii. The debtor might not want to continue paying the lender the amount provided for in the confirmed plan.
        iii. Debtor's counsel will be entitled to charge $1,800 through the plan.
    d. Should the debtor file a motion to refer and motion to modify simultaneously?
        i. The lender may not get paid during the LMM process and might object to waiting for payments.
        ii. The modification cannot be delayed during the LMM process so that creditors, other than the lender, will continue to get paid.

iii. Debtor's counsel may only charge $900 until the mediation conference is scheduled, potentially requiring at least a second modified plan once the mediation conference is scheduled and a third modified plan after LMM is completed.

e. Will the debtor be able to afford $1,800 for LMM attorney's fees for each property and possibly two or three modification fees in the amount of $500 each? Is debtor's counsel willing to accept reduced fees?

F. Disbursement of Pre-confirmation Adequate Protection Payments and Court Ordered Trial/interim Payments in the Broward/West Palm Beach Divisions

1. The trustee will file a motion to disburse pre-confirmation adequate protection payments ("LMM payments") and court ordered trial/interim payments ("TPP payments") by negative notice in all debtor-represented LMM cases.

2. Once the order is entered, the trustee will disburse LMM payments to administrative, secured and priority creditors, less all applicable trustee's fees and costs, in accordance with the trustee's customary monthly disbursement procedures (a) as provided for in the last plan filed before the twenty-fifth day of the month preceding the disbursement, (b) in the amount listed on the plan, and (c) to the address listed on the proof of claim (if one has been filed) or to the address listed in the plan (if no proof of claim has been filed) or to the address listed on the schedules (if no proof of claim has been filed nor address listed on the plan).

3. In the event the debtor files an amended plan after the twenty-fifth day of the month preceding the disbursement, the trustee will refrain from disbursing LMM payments under that amended plan until the following month and will disburse those payments according the last plan filed prior to the twenty-fifth day of the month preceding the disbursement.

4. In the event the debtor remits insufficient payments under the plan, the trustee will disburse partial, pro-rata LMM payments in accordance with the trustee's customary monthly disbursement procedures.

5. If the debtor amends the plan to remove any administrative, secured or priority creditor, all LMM payments disbursed to those creditors must be reflected in the proposed amended plan, as paid, and the trustee will not be required to recoup any funds disbursed to any creditor under any prior plan.

6. In the event any administrative, secured or priority creditor returns any disbursement payment to the trustee, the trustee will file a motion to deviate from the plan, as applicable.

7. If the court has entered an order approving a loss mitigation agreement between the parties, the trustee will disburse three TPP payments to the lender at the address listed on the order (if one is listed), or to the address listed on the proof of claim (if no address is listed on the order) prior to the trustee's customary

monthly disbursement:

a. upon receipt of an email addressed to lmm@ch13weiner.com from debtor's counsel (1) no later than the twenty-fifth day of each of the three months preceding the TPP payment disbursements, (2) requesting early payments to the lender as provided for in the confirmed plan and (3) notifying the trustee that the debtor is current under the plan.
b. If debtor's counsel fails to timely email the trustee, as stated above, during any of the three months preceding TPP disbursements, the trustee will disburse to the lender as provided for in the confirmed plan and in accordance with the trustee's customary monthly disbursement procedures. The trustee will not disburse those TPP payments to the lender at an earlier date.
c. If the debtor is not current on the twenty-fifth day of each of the three months preceding the TPP payment disbursements, the trustee will disburse to the lender as provided for in the confirmed plan and in accordance with the trustee's customary monthly disbursement procedures. The trustee will not disburse those TPP payments to the lender at an earlier date.

8. In the event the debtor remits insufficient payments under the confirmed plan, the trustee will disburse partial, pro-rata TPP payments in accordance with the trustee's customary monthly disbursement procedures.

9. The trustee will make every effort to disburse TPP payments to the lender prior to the first day of each of the three months of TPP payments, but will not assure the parties that those payments will be received according to the lender's schedule or pursuant to any agreement between the parties.

10. If the debtor modifies the plan at any time to remove the lender, all LMM payments and TPP payments disbursed to the lender must be reflected in the proposed modified plan, as paid, and the trustee will not be required to recoup any funds disbursed to any creditor under any prior plan.

11. The trustee will cease making early TPP payments to the lender on the month following the three TPP payment months as provided for in the confirmed plan and in accordance with the trustee's customary monthly disbursement procedures thereafter.

12. Commencing the month following the three TPP payment months, the trustee will disburse payments to the lender at the address listed on the proof of claim, if different than the order, in accordance with the trustee's customary monthly disbursement procedures.