

Forbearance Agreements and How They Impact

Chapter 13 Bankruptcy

1) COVID Relief Provisions in Relation to Chapter 13 (resource: National Consumer Law Center)

- a. Debtor may modify the plan as long as the plan was confirmed prior to March 27, 2021, and if the Debtor is experiencing a COVID-related hardship. CARES Act, § 1113(b)(1)(C).
 - i. Sunset date of this provision is scheduled for March 27, 2022.
- b. If the Debtor has missed three (3) or fewer mortgage payments, or has obtained a forbearance agreement or loan modification, Debtor may seek an early Chapter 13 Discharge. CAA, div. FF, tit. 10, § 1001(b).
 - i. Sunset date of this provision is scheduled for December 27, 2021.
- c. Debtor cannot be denied a mortgage forbearance under the CARES Act if the Debtor is in a pending bankruptcy or has received discharge. CAA, div. FF, tit. 10, § 1001(c).
 - i. Sunset date of this provision is scheduled for December 27, 2021.
- d. Mortgage servicer may file a “CARES forbearance claim” for the amount included in the forbearance agreement granted to the Debtor under the CARES Act. CAA in div. FF, tit. 10, § 1001(d).
 - i. Pursuant to 11 U.S.C. § 501(f) and § 502(b)(9), the supplemental proof of claim must be filed no later than 120 days after expiration of forbearance.
 - ii. Sunset date of this provision is scheduled for December 27, 2021.
- e. Debtor, Mortgage Servicer, or any other party, may file a modified plan to provide for the forbearance claim. CAA div. FF, tit. 10, § 1001(e).
 - i. Sunset date of this provision is scheduled for December 27, 2021.

2) Practical Applications of COVID Relief Provisions in a Chapter 13

- a. Modifying the Plan
 - i. If Debtor’s Plan was confirmed prior to March 27, 2021 and the Debtor is experiencing a hardship directly related to COVID, a Modified Plan may be filed extending the plan up to 84 months.
 - ii. The Modified Plan should indicate in Part 9 why and how the plan is being modified, and service of the Modified Plan and Transmittal Letter should be made on all affected creditors.
 - iii. A COVID certification should also be filed with the court in support of the Modified Plan.
 - iv. If the Modified Plan is including a forbearance agreement amount, Debtor will need to provide proof of the amount listed in Plan.
 1. Modified Plan and transmittal letter will need to be served on Mortgage Servicer or on counsel for Mortgage Servicer if a Notice of Appearance has been filed.

2. If Mortgage Servicer disagrees with the amount listed in the plan, an objection should be timely filed.
- b. Filing a Proof of Claim
 - i. Mortgage Servicer should file a supplemental claim listing the forbearance amount to be paid through the Modified Chapter 13 Plan.
 - ii. If a Supplemental Proof of Claim is filed due to a Forbearance Agreement, the Debtor should file a Modified Plan within thirty (30) days addressing the supplemental claim unless a Modified Plan has already been filed.
 - c. Notice of Final Cure/Chapter 13 Discharge/Closing a Case
 - i. When a case is ready to close, but a Mortgage Forbearance Notice has been filed by the mortgage company, the case WILL NOT be closed.
 - ii. The Debtor and Creditor need to advise the status of the Mortgage Forbearance and if the arrears have been addressed.
 - iii. Once a response is received, and the Mortgage Forbearance arrears have been addressed, a Notice of Final Cure can be filed and the case closed.

3) Forbearance Agreements and Problems in Chapter 13

- a. Debtors are not always informing their counsel when they have been approved for a Forbearance Agreement.
- b. Plans are not being modified to address the arrears in a Forbearance Agreement.
 - i. Additionally, even when a Modified Plan is filed to address the Forbearance Agreement, Proof of Service and a COVID Certification are not always being filed at the same time as the Modified Plan, which can hold up confirmation.
 - ii. When a Modified Plan is filed to address the arrears pursuant to a Forbearance Agreement, if there is no consent order, or a supplemental proof of claim filed to support the amount listed in the Modified Plan, the Trustee may not be able to confirm the Modified Plan or disburse funds.
 - iii. Need to make sure the Modified Plan is feasible and Schedules I & J support the new plan payment being proposed.
- c. Proof of Claims are not being filed to address the arrears in a Forbearance Agreement.
 - i. If there is no supplemental claim on the claims register, the Trustee may not be able to disburse funds.
 - ii. When filing a Supplemental Claim, need to make sure the claim includes the breakdown, and the total amount due, under the Forbearance Agreement.
- d. When the Debtor does not modify their plan, and the Mortgage Servicer does not file a supplemental claim addressing the arrears listed in the Forbearance Agreement, the arrears remain outstanding and the case may not be ready to close.