

MEMO RE: CONSOLIDATED APPROPRIATIONS ACT 2021

- I. Effective date is 12/27/20.
- II. The Act amends certain provisions of the Bankruptcy Code. See *TITLE X – BANKRUPTCY RELIEF*. Those provisions of the Act that affect Chapter 13 are summarized as follows:
 - A. **PROPERTY OF THE ESTATE.** §541(b) is amended by adding §541(b)(11) to exclude as property of the estate any stimulus payments related to Covid 19 relief payments. This provision sunsets or expires 1 year after the enactment of this Act or 12/27/21.
 - B. **DISCHARGE.** §1328 is amended by adding a provision - that subject to subsection (d) the court may grant a discharge under subsection (a) to a debtor who has not completed payments to the trustee or a creditor holding a security interest in the principal residence if – (1) the debtor defaults on not more than 3 mortgage payments due per §1322(b)(5) on or after 3/13/20, caused by a material hardship due directly or indirectly by Covid 19 pandemic; or (2)(A) the plan provides for curing a default and maintaining mortgage payments per §1322(b)(5); and (B) the debtor has entered into a forbearance agreement or loan modification with the creditor. This provision sunsets or expires 1 year after the enactment of this Act or 12/27/21. [This will apply only to those cases which would be subject to a discharge between 12/27/20 – 12/27/21.]
 - C. **CARES FORBEARANCE CLAIMS.** §501 is amended to add §501(f)(1) to permit a creditor to file a “CARES forbearance claim” which is a supplemental claim for the amount of the mortgage payments not received by the creditor during the forbearance period under the CARES Act. The loan must be a federally backed mortgage loan; the creditor must be an eligible creditor; the plan must provide for the claim per §1322(b)(5); only the creditor may file such claim. In addition, if the loan has been modified or deferred by agreement between debtor and creditor as it relates to a forbearance granted per the CARES Act to cure the mortgage payments forborne the claim must include – the relevant terms of the modification or deferral; a copy of the modification or deferral; and a description of the payment to be deferred until the date the loan matures. §502(b)(9) is amended to provide that a CARES forbearance claim must be “filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under ... the CARES Act.” Any such claim filed beyond the 120 time period is tardy and may be disallowed if objected to. This provision sunsets or expires 1 year after the enactment of this Act or 12/27/21.
 - D. **MODIFICATION OF THE PLAN AFTER CONFIRMATION.** §1329 is amended to add that if a creditor files a supplemental CARES Forbearance Claim the debtor may file a modification of the plan to provide for this claim but the debtor must file the modification on or before 30 days after the claim is filed. If the debtor does not file a modification the UST, trustee, or any party in interest (this includes the secured creditor or any other creditor) may file a motion to modify the plan to provide for the claim. This provision sunsets or expires 1 year after the enactment of this Act or 12/27/21.
 - E. **TERMINATION OF UTILITY SERVICES.** §366 is amended to provide that “a utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment ... if the debtor (1) is an individual; (2) makes a payment to the utility for any debt owed for service provided during the 20 day period beginning on the date of the order for relief; and (3) after the date on which the 20 day period beginning on the date of the order for relief ends, makes a payment to the utility for services provided during the pendency of case when such a payment becomes due.” This provision sunsets or expires 1 year after the enactment of this Act or 12/27/21.

III. CARES ACT.

- A. Remember that the deadline to modify a plan to extend term beyond 60 months but not more than 84 months expires on 3/27/21. A key requirement is that the plan must have been confirmed prior to 3/27/20.**
- B. Remember that the mortgage forbearance plan expires on 3/27/21.**
- C. Remember to file a plan modification to address how forborene payments will be paid to the lender.**