Filing Claims, Reviewing Plans and Seeking Relief from Stay

This session will discuss how changes to Federal Law and moratorium related issues have impacted the way we file claims, review proposed Chapter 13 plans for potential areas of concern, and evaluate when and how to seek relief from stay in the face of default.

- Filing Claims, Reviewing Plans
- Seeking Relief from Stay during and after forbearance agreements and/or loan modifications
- Consolidated Appropriations Act

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1. Consolidated Appropriations Act
    a. Introduced and passed with the dual goals of addressing areas of Covid-19 related relief and providing continued funding of the Federal Government
    b. Effective on Signing by the President
    c. Provides some details on how to address issues that have arisen related to prior efforts to provide Covid-19 relief
2. Filing Claims
    a. Proof of Claims – pre-petition / active forbearance
    b. Forbearance Claims
        i. Updated Section 501(f)
            1. 501(f)(A) CARES forbearance claim means a supplemental claim for the amount of a Federally backed mortgage loan or a Federally backed multifamily mortgage loan that was not received by an eligible creditor during the forbearance period of a loan granted forbearance under the CARES Act.
            2. (B) If an underlying mortgage loan obligation has been modified or deferred by an agreement of the debtor and an eligible creditor of the mortgage loan in connection with a mortgage forbearance granted under the CARES Act in order to cure mortgage payments forborne under the forbearance.
        ii. Applicable ONLY to Federally Backed Mortgages
        iii. Claim requirements
        iv. Claim allowance
        v. When to file – Suggestions
    c. Conventional / Private Investor Claims
3. Reviewing Plans
    a. Modifying the Plan for Supplemental & Forbearance Claims

   b. The Consolidated Appropriations Act amends 11 U.S.C. § 1329 to allow modification of a Chapter 13 plan to account for creditor CARES Forbearance Claims.
   c. This in in addition to the previously allowed plan extension to 84 months.
   d. This in effect reverses *In re Heinzel*, 511 B.R. 69, W.D. Texas (2014), which holds that a Debtor may not modify a plan post confirmation to cure a post petition default.
   e. If the Debtor fails to modify the plan 30 days after the date on which a creditor files a forbearance claim, any party in interest may request a modification of the plan to provide for the proof of claim.
4. Relief from Stay during and after forbearance agreements and/or loan modifications
   a. Filing a Forbearance Claim / Supplemental Claim before or after the Motion for Relief
5. Discharge Before Payments Made
   a. Consolidated Appropriations Act of 2021 amends Section 1328 to allow the court to grant the debtor a discharge even where all plan payments have not been remitted. This provision sunsets 12/27/2021.
   b. There are two qualification routes
      i. A chapter 13 debtor who is 3 or less payments delinquent on a residential mortgage due to a Covid-19 related financial hardship; or
      ii. A chapter 13 debtor who is curing and maintaining payments on a residential mortgage and the debtor has entered into a qualifying loan modification or forbearance agreement.
   c. The discharge is discretionary and many judges may look for other options. Some will read this this provision to be applicable only where all other plan provisions and payment requirements have been complied with.
   d. Presumably, long term and non-modifiable mortgage debt will not be discharged/forgiven.
   e. The early discharge option may adversely impact all other creditors with modifiable claims.