

BANKRUPTCY CHANGES UNDER THE 2020 "CARES" ACT



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The Coronavirus Aid, Relief, and Economic Security or the "CARES Act" passed by Congress last week to address the current COVID-19 crisis contained certain changes to the Bankruptcy Code. These changes became effective on April 1, 2020, and primarily are found in Section 1113 of the CARES Act. **There do not appear to be any specific provisions in the CARES Act impacting auto lenders.** Below are the highlights.

Modification of Confirmed Chapter 13 Plans

Under the Bankruptcy Code, repayment under a Chapter 13 plan could not extend more than 60 months. Under the new law, for a limited period of time a confirmed Chapter 13 plan can be modified to extend repayment up to 84 months.

- Only applies to a plan confirmed **prior to March 27, 2020** – the right to modify is not available for plans which have not yet been confirmed
- May only be requested if the Debtor is or has "experienced a material financial hardship due, directly or indirectly", to the coronavirus disease 2019 pandemic
- Modifications may extend the original plan term for as long as 84 months from the time of the due date of the original confirmed plan payment
- Must obtain court approval of the modification by March 27, 2021

Exclusions from Income

In addition, the Bankruptcy Code is amended to exclude certain benefits related to COVID 19

- COVID 19 income supplements from the Government are excluded

from Current Monthly Income in the modification calculations

- This is true even if the Debtor replaces lost income from COVID 19
- Current monthly income under § 707(b) does not include payments received under CARES Act
- COVID 19 income is not included in projected disposable income under chapter 13
- These exclusions are valid for all present and future cases, but expire on March 27, 2021

Foreclosure Forbearance

Section 4022 of the CARES Act provides a temporary moratorium on real estate foreclosures is in place under circumstances.

- Affects “Federally backed mortgage loan” for residential real property, 1-4 family occupancy
- During forbearance, no penalties or excess interest accrue

Other Bankruptcy Law Changes

- For the new Small Business Reorganization Act, Chapter 11 cases filed under the so-called subchapter V, raises the eligibility debt ceiling to \$7,500,000, but only for new cases filed between March 28, 2020 and March 27, 2021. The old debt ceiling was \$2,725,625, and this provision sunsets in one year (e.g. effective March 28, 2021, the old debt ceiling returns)
- No affiliate of a public company is eligible to file under the SBRA. This is a permanent change.

Dennis LeVine focuses his state wide practice on bankruptcy litigation and creditors’ rights. Dennis is one of only seven attorneys in Florida to be Board Certified in both consumer bankruptcy law and business bankruptcy law by the American Board of Certification (ABC).

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