

COVID-19 Related Impact in Chapter 13 Cases

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Modifications of Chapter 13 Confirmed Plans

I. Mortgage Forbearance Agreements

- **CARES Act provides that:**

- *A borrower of a federally backed mortgage loan on a residence*
- *Who experiences a financial hardship due, directly or indirectly, to the COVID-19 emergency*
- *Regardless of delinquency status*
- *May request a forbearance by*
 - *Submitting a request to the borrower's servicer; and*
 - *Affirming that the borrower is experiencing a financial hardship during the emergency.*

- **Forbearance vs. Deferral**

- *A forbearance arrangement is an agreement made between the lender and the borrower in which the lender agrees not to exercise its legal right to foreclose on a mortgage even if the regular payments are not received during the forbearance period. Sometimes referred to as a payment suspension. Borrower must resume the regular payment at the end of the forbearance period, plus pay an additional amount to get current on the missed payments. Forbearance has no documentation requirements. The borrower's request and affirmation of COVID related financial hardship is enough for approval.*

- *A deferral arrangement is an agreement between borrower and lender in which the lender agrees to postpone payment requirements to some point in the future—generally at the end of the loan term. Deferral repayment is more like a loan modification and will require documentation requirements for approval.*

- **Administrative Orders**

- *FLMB-2020-5 – Not a violation of the automatic stay to communicate with debtor about a forbearance agreement.*

- **Modifying a Confirmed Plan to Address Forbearance Agreements**

- *Differing practices in modifying confirmed plans to account for forbearance of mortgage payments. Check with your local Chapter 13 Trustee.*
 - *Plan payment remains the same;*
 - *Debtor must modify to change plan payment;*

- *Trustee files Notice and Temporary Plan Payment Reduction.*
- *Modification to address Post Petition Arrears. Section 1322(b)(5) requires the cure and maintenance of payments on secured claims whose last payment is due after plan completion.*

II. CARES Act Amendments to Section 1329

MODIFICATION OF PLAN AFTER CONFIRMATION.—Section 1329 of title 11, United States Code, is amended by adding at end the following:

“(d) (1) Subject to paragraph (3), for a plan confirmed prior to the date of enactment of this subsection, the plan may be modified upon the request of the debtor if—

“(A) the debtor is experiencing or has experienced a material financial hardship due, directly or indirectly, to the coronavirus disease 2019 (COVID–19) pandemic; and

“(B) the modification is approved after notice and a hearing.

“(2) A plan modified under paragraph (1) may not provide for payments over a period that expires more than 7 years after the time that the first payment under the original confirmed plan was due.

“(3) Sections 1322(a), 1322(b), 1323(c), and the requirements of section 1325(a) shall apply to any modification under paragraph (1).”

- *This amendment allows for Chapter 13 plans confirmed prior to March 27th by extending the plan up to 7 years where the debtor is experiencing or has experienced a material financial hardship due directly or indirectly to COVID-19.*
 - *Is the 7 year period automatic if material financial hardship is established by debtor, or does the good faith requirement of Section 1325(a)(3) direct the Court to consider whether the material financial hardship warrants the extension of plan payments and a delay of disbursements to creditors’claims.*
- *The modification can only be approved after notice and a hearing.*

i.