

COVID-19 and Bankruptcy

CrossState Credit Union Association
Webinar
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COVID-19 and Bankruptcy

- Effect of COVID-19 on Consumer Bankruptcies
- Effect of COVID-19 on Business Bankruptcies
- Bankruptcy Rule Changes Due to COVID-19
- Small Business Reorganization Act
- Bankruptcy Basics



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Effect of COVID-19 - Consumer

- Industry professionals predicting "tsunami" of consumer filings
 - Governmental intervention has delayed filings thus far
 - Fewer American personal bankruptcies during second quarter of 2020 than a year ago (down about 25%)
 - Chapter 7 bankruptcies peaked at 1.1 million in 2010 on heels of Great Recession
 - Tapered down to 450,000 by 2019
 - Likely to see consumer bankruptcies rise once protections are lifted
 - Moratoriums on foreclosures and evictions run out
 - Reduction of government aid

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Effect of COVID-19 - Business

- Pandemic-prompted shut-down has devastated small businesses, but still haven't seen the expected flood of cases...yet
 - New York Times reported that enormous number of filings likely to hit over the coming months could overwhelm courts
 - National Bureau of Economic Research study states that number of active business owners in the country fell by 22%, from 15 million to 11.7 million between February and April (compare to 5% during Great Recession)
 - U.S. Chamber of Commerce Poll – 43% of small businesses likely will close permanently in final 6 months of 2020
 - American Bankruptcy Institute (ABI) reports 48% increase in commercial Chapter 11 filings in May over 2019, although total commercial filings decreased 28%
 - June 2020 saw 23% more bankruptcy filings than 2019
 - Likely due to federal and state pandemic-relief programs like PPP



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Effect of COVID-19

- Industry professionals and scholars expect to see considerable uptick in bankruptcy filings in 4th quarter and then a dramatic increase next year
 - Likely that businesses that were already struggling will be first to file
 - Already seen a lot of filings in retail (J. Crew, Neiman Marcus, Forever 21, JC Penney, Pier 1 Imports, etc.)
 - Small businesses that were doing well before shutdown will hopefully come through OK, due in part to PPP program and other government initiatives
 - Will have to modify businesses to accommodate a post-pandemic world



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Small Business Reorganization Act 2019

- Amendment to Chapter 11 of Bankruptcy Code (known as "Subchapter V")
 - Passed last summer (well before COVID-19)
 - Went into effect in February
 - Purpose
 - Seek speedy proposal and implementation of a consensual plan
 - Reduce cost to debtors
 - Quicker return to creditors
 - Typically results in a win-win for both parties



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Small Business Reorganization Act 2019

- Qualifications and Petition
 - To qualify – person or entity engaged in commercial or business activity with aggregate noncontingent liquidated secured and unsecured debts of \$2,725,625 or less (excluding debt owed to affiliates or insiders)
 - INCREASED to \$7.5 million by CARES ACT for 1 YR
 - No single asset real estate debtors
 - Small business debtor operates as debtor-in-possession
 - Must elect Subchapter V
 - Upon filing, must file a copy of business's most recent balance sheet, statement of operations, cash-flow statement and federal income tax

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Small Business Reorganization Act 2019

- Key Elements of SBRA
 - Streamlined Requirements
 - Additional benefits for debtors
 - Tighter timeline (with limited extensions)
 - Assistance of subchapter V trustee



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SBRA – Streamlined Requirements

- No creditors committee unless court orders otherwise (exception, not the rule)
- No disclosure statement required
- Administrative expenses (including trustee fees) paid over time through plan
 - No quarterly UST fees



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SBRA – Additional Provisions

- Only debtor may file subchapter V plan
- Individual debtors may cramdown mortgage on principal residence if loan proceeds were used "primarily in connection with the small business of the debtor" and not to purchase the residence
- Debtor may hire professionals even if they are creditors
- Discharge upon confirmation of consensual plan OR after 3-5 years of payments for cramdown plans



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SBRA – Tighter Timeline

- UST appoints subchapter V trustee and sets 341 meeting within 24-48 hours
 - 341 meeting held as close as possible to 21 days after filing
- Status conference not later than 60 days after filing
 - 14 days before status conference must file report showing details of efforts debtor has taken and will take to attain consensual plan
- Debtor shall file plan not later than 90 days after petition date



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SBRA – Subchapter V Trustee

- SBRA allows for either "standing" or case-by-case trustees – both appointed by U.S. Trustee and have same duties
 - Facilitate the development of a consensual plan of reorganization
 - Conduit for plan payments in the case of nonconsensual cramdown plans
 - Authority to investigate financial affairs of debtor ONLY IF party-in-interest requests and Court approves
 - May object to proofs of claim
 - If DIP is removed for cause, trustee will operate business
 - Terminated upon "substantial consummation" of confirmed plan



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Bankruptcy Rule Changes

- Under CARES Act, debtors with pre-existing Chapter 13 repayment plan can extend its length to 7 years
 - Debtor must show material financial hardship related to COVID-19
- Stimulus checks and other federal payments related to COVID-19 will not count as monthly income for debtors filing under Chapter 7 and will not count as disposable income under Chapter 13
 - Payments will not affect eligibility under either plan

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Bankruptcy Rule Changes

- Debtor may not be required to provide an original signature on petition
 - During COVID-19, debtors and attorney have been permitted to review paperwork virtually instead of meeting to arrange for physical signature
- 341 meetings are conducted by telephone or through a virtual platform
- Court proceedings are largely telephonic or virtual (different rules in each jurisdiction)

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Bankruptcy Basics – Reminders

- Verify Filing
- Carefully review Petition, Schedules and Notices
- Carefully review and monitor Chapter 13 Plan
- Exercise remedies wisely
 - Attend 341 Meeting
 - Object to Discharge/Dischargeability of Debt
 - Obtain reaffirmation agreement(s)
 - File motion for relief from stay (or get stipulation)
 - Object to Plan
- File a Proof of Claim

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Bankruptcy Basics – Verify Filing

- If member claims he or she has filed bankruptcy, VERIFY
 - Notice from member or attorney – should be on official form with docket information
 - VCIS (Voice Case Information System)
 - Free automated phone service – call 866-222-8029 and follow voice prompts
 - PACER (Public Access to Case Electronic Records)
 - Electronic public access service that allows users to obtain case and docket information from federal appellate, district and bankruptcy courts, and the PACER Case Locator via the Internet
 - Users must register for an account with PACER and there is a per page charge



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Bankruptcy Basics – Notice of Filing

- Upon a filing, should receive a Notice of Filing
 - Debtor name
 - 341 Meeting (date, time and location)
 - Best way to get information – essentially a deposition
 - Deadlines
 - Objection to discharge
 - Objection to exemptions
 - Proof of claim (may be in a second Ch 7 notice OR notice of assets and need to file POC if at first deemed a no-asset case and then changed to asset case)



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Bankruptcy Basics – Automatic Stay

- What should a credit union do/stop doing once a bankruptcy is filed?
 - Flag member file as being in bankruptcy
 - Call bankruptcy counsel
 - Stop all contact with member, including any collection efforts
 - Halt any foreclosure, collection or repossession efforts
 - Confirm insurance coverage on any collateral
 - Determine whether or not to request relief from automatic stay



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Bankruptcy Basics – Filing POC

- Secured and Unsecured Creditors should file a proof of claim
 - Failure to file a POC could result in receipt of ZERO funds
 - Amended Rule 3002(a) states that secured creditors MUST file a POC, although lien is not void based only on failure to file a POC
 - POC must be filed within 70 days after petition date
 - Additional period of 50 days to allow holders of mortgage claims to file the supplemental documents required by Rule 3001(c)(1) and (d)
- BEWARE! Chapter 13 Plan determination of claim amount is binding unless you object to plan (even if you've filed a POC)



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Bankruptcy Basics – Filing POC

- POC form available online
 - <http://www.uscourts.gov/forms/bankruptcy-forms/proof-claim-0>
- Must fully complete form AND attach supporting documents
 - Loan and perfection documents (title, UCC-1, mortgage)
 - FRBP 9037 - Redact where appropriate (Ex 21)
 - Do not send originals



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Bankruptcy Basics – Filing POC

- Attorneys and registered CM/ECF users should file POC electronically
- Credit Union may file directly by electronic means in the EDPA, WDPA and DNJ (no password needed):
 - MDPA - <http://www.pamb.uscourts.gov/electronic-filing-claims-epoc>
 - EDPA - <https://ecf.paeb.uscourts.gov/cgi-bin/autoFilingClaims.pl>
 - DNJ - <http://www.njb.uscourts.gov/content/file-claim>
- Credit Union may file directly in the WDPA by submitting POC in person or via overnight mail to:

United States Bankruptcy Court
Western District of Pennsylvania
Attn: Claims Clerk
5414 U.S. Steel Tower
600 Grant Street
Pittsburgh, PA 15219
- Instructions at <https://www.pawb.uscourts.gov/filing-proof-claim>



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Questions?

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