NACBA Announcement - HEROES Act Bankruptcy Provisions

May 20, 2020

As a majority continue to follow stay at home orders due to the COVID-19 crisis, NACBA’s Legislative Committee with support from NACBA’s Board of Directors have been working nonstop with House and Senate staff to ensure significant bankruptcy provisions were included in H.R. 6800, Health and Economic Recovery Omnibus Emergency Solutions Act, also known as the “HEROES Act”. We are pleased to announce NACBA’s success in having many of our provisions included that will facilitate the availability of bankruptcy for victims of COVID-19 and its foreseeable economic consequences.

NACBA’s Legislative Committee and Board of Directors proudly share our association’s bankruptcy provisions included in H.R. 6800. (Click here to read the bill text, bankruptcy protections begin on page 993).

1. Protecting Homes and COVID Benefits. The House bill included a $100,000 homestead exemption floor, applicable to all cases where the homestead exemption would otherwise be lower, and a provision excluding COVID benefits from property of the bankruptcy estate. Many debtors will be filing bankruptcy cases solely because of the pandemic and its effects. They should not lose their homes just because these circumstances caused financial disaster. And debtors should also be protected from trustees seizing COVID benefits that are often essential to continued subsistence.

2. Protection from Discrimination Against Bankruptcy Debtors. In the initial days of attempting to obtain benefits afforded by the CARES Act, bankruptcy debtors were being told that they cannot receive the benefits such as mortgage relief and small business loans because they are in bankruptcy. Bankruptcy Code section 525 is amended to make clear that no entity can discriminate against past or current bankruptcy debtors in providing COVID-related mortgage assistance.

3. Ensuring Chapter 13 is Available to Families that Need It. The debt limits in Chapter 13 have not kept up with increasing home mortgage and student loan debt. Chapter 13 can also provide a method of reorganization from many small businesses that is much less expensive than chapter 11. The chapter 13 debt limits are doubled by the bill, which would allow more families and small businesses to file chapter 13 cases to resolve the hardships caused by this crisis.

4. Ensuring a Fresh Start for Chapter 13 Debtors Who Become Unable to Make Plan Payments. Debtors currently in chapter 13 will lose jobs and income or have large medical expenses, making continued payments impossible. They now have the option to obtain a chapter 13 discharge without completing payments if they have been in chapter 13 for at least one year.

5. Allowing an Extended Period for Chapter 13 Debtors to Catch Up on Missed Mortgage Payments. Debtors currently must complete their chapter 13 plans within a five-year period. They are now allowed to extend their chapter 13 plans for up to an additional 2 years, not to
exceed 7 years, solely to allow them to catch up on missed mortgage payments or on mortgage payments which had been subject to forbearances.

While not all offered provisions were incorporated into the current bill, NACBA is strongly continuing our efforts towards getting them into the final House and Senate compromise bill. One provision NACBA continues to push for is:

1. Giving Chapter 13 Debtors Options to Deal with Mortgage Payments When There Has Been Forbearance on Those Payments. This provision permits mortgage servicers to file a supplemental claim when there has been forbearance on mortgage payments during a chapter 13 plan. The debtor can request that the court modify the plan or order that the mortgage payments be deferred until then end of the mortgage period. The court can also order mediation to allow the debtor and mortgage servicer to work out a mutually satisfactory arrangement to deal with the payments.

Your membership with NACBA is essential to our work as we continue to fight for you and our consumer bankruptcy clients—thank you for being a valued member. Please share this information with your debtor attorney colleagues who are not yet members and encourage them to join NACBA now. Should you have any questions or comments, please direct them to Krista D’Amelio, Director of Government Affairs: krista.damelio@nacba.com

Sincerely,

John C. Colwell
NACBA President