

Provisions of the CONSOLIDATED APPROPRIATIONS ACT (CAA) affecting Bankruptcy that lapsed after Dec. 27, 2021

Protecting Stimulus Payments

The CAA amends Section 541 of the Bankruptcy Code to exempt stimulus payments from the property of the estate. As a result of this revision, pandemic relief payments will not be available to satisfy obligations owed to creditors. This provision sunsets on December 27, 2021.

Chapter 13 Discharge Available Even if Certain Plan Payments Have Not Been Made

The CAA amends Section 1328 to give the Bankruptcy Court discretion to grant a discharge to a Chapter 13 debtor despite mortgage payment defaults occurring on or after March 13, 2020 (but not more than three monthly payments under a residential mortgage) because of a material COVID-19 related financial hardship. Additionally, the Bankruptcy Court can also grant a discharge to a debtor whose confirmed plan provides for curing defaults on a residential mortgage with a qualifying loan modification or forbearance agreement with the lender having been approved by the Bankruptcy Court. This does not mean mortgage debt will be discharged, but a debtor will be eligible to receive a plan discharge on other debts even though the debtor did not pay all mortgage payments when due under the Plan. This provision sunsets on December 27, 2021.

The CAA Fixes a Problem with CARES Act Forbearance Claims

Under the CARES Act, mortgagors under federally-backed residential and multifamily mortgages can request payment forbearance because of COVID-19 hardships. In some cases, the forbearance period can be as long as 12 months. At the end of the forbearance periods, the mortgagor must pay the deferred mortgage payments in a lump-sum. These deferred mortgage payments caused problems in Chapter 13 cases. To fix these problems, the CAA amends the Bankruptcy Code to allow qualified servicers to file a proof of claim for the deferred payments, even if the claims bar date has passed. The CAA also amends the Bankruptcy Code to authorize debtors to modify a confirmed Chapter 13 plan to address the deferred payment. These changes sunset on December 27, 2021. Director's Bankruptcy Form 4100S is also no longer applicable.

No Discrimination Because of Bankruptcy Filing

The CAA amends Section 525 to provide that no person may be denied relief under three enumerated CARES Act provisions solely because the person is or was a debtor in a bankruptcy case. Section 525 generally offers debtors protection from discriminatory treatment. As amended by the CAA, Section 525 prohibits a debtor from being denied relief on the basis of currently being or having been a debtor under the CARES Act's (i) foreclosure moratorium; (ii) provision providing for the forbearance of residential mortgage loan payments for multifamily properties with federally backed loans; and (iii) temporary moratorium on eviction filings. This provision sunsets on December 27, 2021.

Utilities

The CAA amends Section 366 of the Bankruptcy Code to prohibit a utility from discontinuing utility services to an individual debtor so long as the individual debtor pays the utility company for services rendered in the 21-day post-filing period and continues to make all other post-petition utility payments,

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even if the individual debtor did not otherwise provide the utility company with adequate assurance of payment. This provision sunsets on December 27, 2021.

Customs Duties

The CAA amends Section 507(d) of the Bankruptcy Code so that a party that pays the United States government a customs duty on behalf of an importer is subrogated to the government's priority status under Section 507(b)(8)(F) for customs duties. Previously, the party paying the customs duty was subrogated to the government's rights, except for the priority status. This provision benefits customs brokers and forwarders who frequently pay the government for customs duties on behalf of their importer-clients. This provision sunsets on December 27, 2021.