

# Ch, Ch, Changes

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# DISCLAIMER: Do Not Rely on the Sunset Dates on these Slides

- ▶ “SUNSET.—Effective on the date that is 1 year after the date of enactment of this Act [the Code provision goes back to how it was before]”
- ▶ COVID-19 Bankruptcy Relief Extension Act



CARES ACT: SBRA “Debtor” debt  
limit increased to \$7,500,000

SUNSETS MARCH 27, 2021

~~CARES ACT:~~ SBRA “Debtor” debt  
limit increased to ~~\$7,500,000~~  
is **\$2,725,625**



Stimulus payments are not  
property of the estate -  
§ 541(b)(11)

SUNSETS DECEMBER 27, 2021



# Chapter 13 Discharge Now Available Even if All Payments Have Not Been Made If Specific Conditions Are Met

SUNSETS DECEMBER 27, 2021

§ 1328(i): Court may grant discharge even if debtor has not completed payments to trustee or mortgage creditor of principal residence, if:

- ▶ Debtor defaults on not more than 3 monthly payments due on a residential mortgage under § 1322(b)(5) after March 13, 2020, and
- ▶ Default caused by material financial hardship due directly or indirectly to COVID-19;

OR



§ 1328(i): Court may grant discharge even if debtor has not completed payments to trustee or mortgage creditor of principal residence, if:

- ▶ Plan provides for curing default and maintenance of residential mortgage payments under § 1322(b)(5); AND
- ▶ Debtor entered into a forbearance agreement or loan modification with the holder or servicer of the mortgage

No discrimination based on  
bankruptcy filing

SUNSETS DECEMBER 27, 2021



**§ 525(d): “A person may not be denied relief under sections 4022 through 4024 of the CARES Act (15 U.S.C. 9056, 9057, 9058) because the person is or has been a debtor under this title”**

- ▶ 15 U.S.C. § 9056 – foreclosure moratorium and right to request forbearance
- ▶ 15 U.S.C. § 9057 – forbearance of mortgage payments for multifamily properties.
- ▶ 15 U.S.C. § 9058 – temporary moratorium on eviction filings
- ▶ While the Bankruptcy Code provision expires December 27, 2021 – the moratorium/forbearance provisions expire June 30, 2021.

# Forbearance Claims – allowance and timeliness

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# CARES forbearance claims: § 501(f) and § 502(b)(9)

## § 501(f) – forbearance claim

- ▶ Supplemental claim for the amount of a federally backed mortgage loan or a federally backed multifamily mortgage loan that was not received by an eligible creditor
- ▶ Defines “eligible creditor”
- ▶ Special requirements where the mortgage is modified to cure forbore payments

## § 502(b)(9)(C) – timeliness

- ▶ CARES forbearance claim “shall be timely filed if the claim is filed before the date that is 120 days after the expiration of the forbearance period of a loan granted forbearance under section 4022 or 4023 of the CARES act (15 U.S.C. 9056, 9057)”



§ 1329(e) allows modification of chapter 13 plans to allow for CARES forbearance claims – either debtors or any other party in interest may move for such modification

SUNSETS DECEMBER 27, 2021



# Extended Time for Performance under an Unexpired Non- Residential Real Property Lease in a Subchapter V Case

SUNSETS DECEMBER 27, 2022

## § 365(d)(3)(B)

- ▶ SBRA debtor's time to perform under any unexpired lease of nonresidential real property
- ▶ If experienced material financial hardship due directly or indirectly to COVID-19
- ▶ 60 days after the order for relief
- ▶ 60-day further extension possible if continued financial hardships exist
- ▶ Any unpaid obligations constitute an administrative expense



# Extended Time to Assume or Reject an Unexpired Non-Residential Real Property Lease

SUNSETS DECEMBER 27, 2022

## § 365(d)(4)

- ▶ Was 120 days – now 210 days

SUNSETS DECEMBER 27, 2022



# Preferences

SUNSETS DECEMBER 27, 2022

## § 547(j)

- ▶ Neither Debtor nor Trustee can avoid payments during the preference period of “covered rental arrearages” and “covered supplier arrearages”
- ▶ Entered into a lease/executory contract with lessor or supplier
- ▶ Amended the lease/contract after March 13, 2020
- ▶ Amendment must have deferred or postponed payments otherwise due under the lease/contract
- ▶ Fees/penalties/interest not covered



# Utilities

SUNSETS DECEMBER 27, 2021

## § 366(d)

- ▶ A utility may not alter, refuse, or discontinue service to a debtor who does not furnish adequate assurance of payment IF:
- ▶ Debtor is an individual
- ▶ Debtor pays utility for services provided during the 20-day period from the order for relief
- ▶ After the 20-day period continues to make payments as they become due



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# Fed. R. Bankr. P. 2004(c)

- ▶ Added electronically stored information in addition to the production of documents as part of a 2004 examination
- ▶ A subpoena for a Rule 2004 examination is now properly issued by an attorney authorized to practice in the court where the bankruptcy case is pending, even if the examination occurs outside the district.



# Fed. R. Bankr. P. 8012

- ▶ (a) the disclosure statement requirements for any nongovernmental corporation as a party in an appeal are similarly required if such party seeks to intervene
- ▶ (b) disclosure requirements regarding the debtor – including each debtor not named in the caption and if the debtor is a corporation, the information required in (a).

# Fed. R. Bankr. P. 8013, 8015, 8021

- ▶ Removed several references to proof of service due to a 2018 amendment to Rule 8011(d) which eliminated the requirement of proof of service when filing and service are completed using a court's electronic filing system.



General Order 385  
New Model  
Chapter 13  
Confirmation Order

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

IN RE:

Debtor(s).

Case No.

ORDER CONFIRMING CHAPTER 13 PLAN

IT HAVING BEEN DETERMINED AFTER NOTICE AND HEARING THAT:

1. The chapter 13 plan, Docket No. \_\_\_\_\_, complies with the provisions of 11 U.S.C. § 1325.
2. Debtor(s) filed all state and federal tax returns required by law to be filed for all taxable periods ending the 4-year period prior to the filing of this bankruptcy.
3. Debtor(s) have paid all domestic support obligations, as defined in 11 U.S.C. § 101(14A), that first became due and payable after the filing of this bankruptcy which they were required to pay by a judicial or administrative order or by statute.

IT IS HEREBY ORDERED THAT:

The chapter 13 plan is confirmed, and related motions contained therein are granted, incorporating the following:

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[Chapter 13 Plan \(1/1/2019\)](#)

Local form to be used for initial, amended and modified plans filed on or after 1/1/2019.




[Chapter 13 Confirmation Order](#)



# LBR 2002.6 – Payment of Chapter 7 Administrative Expenses

- ▶ Trustee may pay actual, necessary costs and expenses under \$1,000 without a Court order
- ▶ Creditors are advised that they may file an objection and request a hearing on this procedure within 14 days from the date of the notice



NOTICE IS FURTHER GIVEN THAT: The trustee may need to pay necessary administrative expenses of the bankruptcy estate. If an expense does not exceed \$1,000, the trustee may pay the expense without obtaining a court order in advance. If you object to this procedure, then you must file an objection with the Bankruptcy Court within 14 days from the date of this notice.



# LBR 2002.6 – Payment of Chapter 7 Administrative Expenses

- ▶ Trustee may pay actual, necessary costs and expenses under \$1,000 without a Court order
- ▶ Creditors are advised that they may file an objection and request a hearing on this procedure within 14 days from the date of the notice
- ▶ Trustee will obtain court approval before or at the time trustee seeks approval of the final report

# LBR 3003.1 – Filing Proofs of Claim in Chapter 11 Cases

- ▶ Standardized the claims bar date in all chapter 11 cases - proofs of claim in a chapter 11 case shall be filed not later than seventy (70) days after the date of the order for relief and not later than 180 days for a governmental unit



# LBR 3014.1 - § 1111(b) Elections

- ▶ An election under § 1111(b) shall be made no later than 14 days before the first scheduled confirmation hearing if:
  - ▶ The Court has entered an order conditionally approving a disclosure statement
  - ▶ The disclosure statement and plan are combined and there is no hearing on the disclosure statements
  - ▶ The Court has not ordered application of § 1125 in a case under chapter 11 subchapter V

# LBR 8001.1 – Bankruptcy Appeals

- ▶ Appeals governed by:
  - ▶ Fed. R. Bankr. P. 8001– 8028
  - ▶ General Order 349



# LBR 9004.1 – Form of Orders

- ▶ Clarified that Orders are to be submitted in a format compatible with Word (as opposed to WordPerfect)

# LBR 9010.1 (e)(5)(E) added

- ▶ an appearance before this court does not include the preparation, signing, and filing by a creditor of:
  - ▶ (A) a proof of claim, or an amendment, withdrawal, or notice of assignment of such proof of claim,
  - ▶ (B) a stipulation for relief from the automatic stay,
  - ▶ (C) a reaffirmation agreement,
  - ▶ (D) a request for service of documents, or
  - ▶ (E) an application for payment of unclaimed funds.



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# NextGen CM/ECF

**BANKRUPTCY CM/ECF SYSTEM DOWN FRIDAY, MARCH 5  
12:00 PM (MOUNTAIN) 11:00 AM (PACIFIC)**

LIVE MARCH 8, 2021



# What you should already know or have done:

- ▶ Have an upgraded PACER account.
  - ▶ Legacy (6 characters) v. Upgraded (8 characters)
- ▶ Know your PACER username/login and password.
- ▶ Know your current CM/ECF username/login and password.
- ▶ Alert your private vendor of our go-live date.

# What you will do on March 8:

- ▶ Link your upgraded PACER account to your District of Idaho BANKRUPTCY CM/ECF account
  - ▶ 1. Log out of PACER
    - ▶ Clear your cache (Ctrl+Shift+Delete)
    - ▶ Delete any bookmarks to Idaho Bankruptcy ECF login
  - ▶ 2. Completely close your browser
  - ▶ 3. Open your browser and go to:  
<https://www.id.uscourts.gov/clerks/Welcome.cfm>
  - ▶ 4. Click the Bankruptcy ECF Login button
  - ▶ 5. At the login prompt, type your Upgraded PACER Account Login/Password
  - ▶ 6. Click "Link my filer account to my PACER account"
  - ▶ 7. Enter your CM/ECF login and password to link your accounts



# What you shouldn't do on March 8:

- ▶ Do not link your NextGen account to a firm/shared PACER account
- ▶ Do not create a new PACER registration

# After your account is linked:

- ▶ All future access to CM/ECF starts with logging into <https://pacer.uscourts.gov> (and that is where the ECF login links on the Court's website will direct you as of March 8)
- ▶ All changes to your account occur through PACER
- ▶ Once linked, the Court will not be able to assist with login and password issues



# Problems?

- ▶ Check the Court's NextGen CM/ECF website:
  - ▶ <https://www.id.uscourts.gov/district/nextGen/Overview.cfm>
- ▶ Contact the PACER Service Center at:
  - ▶ 800-676-6856 or
  - ▶ [pacer@psc.uscourts.gov](mailto:pacer@psc.uscourts.gov)
- ▶ Contact the Clerk's office:
  - ▶ Boise: (208) 334-1361
  - ▶ Pocatello: (208) 478-4123
  - ▶ Coeur d'Alene: (208) 665-6850

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