

Legislative Update

By: Lisa P. Sumner and Jill C. Walters¹

Between the recession in the United States and the changes in Congress and the White House, 2009 promises to bring a host of legislation changing sections of the Bankruptcy Code or related laws. Here is a summary of recently enacted and pending bills of interest:

National Guard and reservists Debt Relief Act of 2008

Signed by President Bush and became law on October 20, 2008

Amends Bankruptcy Code Section 707(b). Prohibits the Bankruptcy Court from dismissing or converting a case based on means testing if the Debtor was a reserve member of the Armed Forces or National Guard on active duty or performing a homeland security defense for 90 days and during the 540 days following the end of such service.

Only applies to personnel called to active duty after September 11, 2001.

Helping Families Save Their Homes in Bankruptcy Act of 2009 (H.R. 200)

Proposed January 6, 2009

Would amend 11 U.S.C. § 109 to change debtor eligibility for chapter 13 as follows:

By excluding debts secured by the debtor's principal residence from the computation of debts if the current value of the residence is less than the secured debt limit;

By excluding debts secured or formerly secured by real property that was the debtor's principal residence from the computation of debts if the residence was sold in foreclosure or the debtor surrendered the residence if the current value of such property is less than the secured debt limit; and

Would add to the list of prohibited claims in 11 U.S.C. § 502(b) claims subject to any remedy for damages or rescission due to noncompliance with TILA or any other provision of State or Federal consumer protection law that was in force when the noncompliance took place.

Would authorize modification of the rights of the holder of a claim for a loan secured by a security interest in the debtor's principal residence that is the subject of a notice that foreclosure may be commenced by:

providing for payment of the amount of the secured claim as determined under § 506;

prohibiting, reducing or delaying adjustments to any adjustable rate of interest; modifying the loan to extend the repayment period up to 40 years less the period the loan has been outstanding;

providing for payment of post-petition interest at a fixed APR equal to the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve, plus a risk premium; and

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providing for payments directly to the claim holder.

Would amend 11 U.S.C. § 1322(c) by relieving the debtor and the debtor's property for liability from a fee, cost or charge incurred while the case is pending and arising from a debt secured by the debtor's principal residence, except to the extent the claim holder files notice of such fee, cost or charge within certain time limits, such charge is lawful, reasonable and provided for in the security agreement, and is secured by property of a value greater than the amount of such claim. In addition, a plan may provide for waiver of any prepayment penalty on a claim secured by the debtor's principal residence.

Would amend 11 U.S.C. § 1325(a) to allow confirmation if the plan provides that the holder of a modified claim secured by the debtor's principal residence will retain the lien until the later of payment of the secured claim or discharge under section 1328.

Emergency Homeownership and Equity Protection Act (H.R. 225)

Proposed January 7, 2009

Would make the same amendments as Helping Families Save Their Homes in Bankruptcy Act of 2009 (H.R. 200) (see above) but does not include the proposed amendments to 11 U.S.C. § 502(b) relating to claims arising from violations of consumer protection laws.

Emergency Home Ownership and Mortgage Equity Protection Act of 2007 (H.R. 3609)

Proposed September 20, 2007

Would amend 11 U.S.C. § 1322(b)(2) as follows:

By prohibiting the holder of a claim secured by debtor's principal residence from adding fees, costs, or charges during the case without notice;

By allowing a chapter 13 plan to modify a claim secured only by the debtor's principal residence and provide for payment over an extended period of time;

By excluding the claim from discharge until paid in full; and

By eliminating the pre-petition credit counseling requirement for the chapter 13 debtor if the debtor submits a certification to the court that the holder of the claim has initiated foreclosure on that residence.

Homes Act (H.R. 3778)

Proposed October 9, 2007

Would amend federal bankruptcy law by authorizing modification of a mortgage secured only by the debtor's principal residence that was initiated prior to September 26, 2007 and allow the principal amount of the mortgage to be lowered to the fair market value at the time of the debtor's plan and allow for the waiver of any applicable early repayment or prepayment penalties;

Would also eliminate the pre-petition credit counseling requirement if the debtor submits a certification to the court that the holder of the claim has initiated foreclosure on that residence.

Un-named (H.R. 5138)

Proposed January 28, 2008

Would amend federal bankruptcy law by allowing a medically distressed debtor to exempt up to \$250,000.00 of the debtor's interest in specified real or personal property that the debtor or a dependent use as a residence, in a cooperative, or in a burial plot.

Would prohibit the dismissal or conversion to chapter 11 or 13 if the debtor is medically distressed or economically distressed caregiver.

Would add to Section 101 of the Bankruptcy Code a definition of a "medically distressed debtor" to mean a person who has more than \$10,000.00 of medical debt not paid by insurance in a 12 month period in the past three years or lives in a household with someone who was out of work for four weeks in 12 months.

Un-named (S. 1561)

Proposed June 7, 2007

Would revise federal bankruptcy law to make (1) loans made under any program funded in whole or in part by a governmental unit or nonprofit institution and (2) any other qualified education loan incurred by the debtor on behalf of the taxpayer, the taxpayer's spouse, or any dependent, including indebtedness used to refinance a qualified education loan, non-dischargeable in bankruptcy.

Helping Families Save Their Homes in Bankruptcy Act of 2007 (S. 2136)

Proposed October 3, 2007 (Last hearing by the Senate Committee on the Judiciary on 11/19/08)

Would amend federal bankruptcy law by allowing a plan to modify a loan secured by a nontraditional or sub-prime mortgage and any lien subordinate to such a claim on a chapter 13 debtor's principal residence.

Would provide for the payment of such a loan, at a fixed annual percentage rate, for a period that is the longer of thirty years or the remaining term of such a loan, beginning at the date of the order for relief.

Would provide that if a loan has been modified to an amount below the original principal, and the debtor's principal residence is sold during the term of the plan, the holder of the claim will be entitled to receive, in addition to the unpaid portion of the allowed secured claim, the net proceeds of the sale, or the amount of the holder's allowed unsecured claim, whichever is less.

Would eliminate the pre-petition credit counseling requirement if the debtor submits a certification to the court that the holder of the claim has initiated foreclosure on that residence.

Would exempt from the estate up to \$75,000.00 of the debtor's interest in his principal residence if the debtor is age 55 or older.

Consumer Credit Fairness Act (S. 3259)

Proposed July 14, 2008

Would amend federal bankruptcy law to subordinate to all other claims any claims arising from a high cost consumer credit transaction. High cost consumer credit transactions include those that exceed the lesser of 15% and the yield on U.S. Treasury securities having a 30 year period of maturity or 36%.

Additionally, would amend Section 707(b) and make the Means Test inapplicable to a debtor who files bankruptcy due to high cost consumer transactions.