

## **Managing the Bankruptcy Portfolio after Bankruptcy Reform**

### **I. Bankruptcy Volumes and Loan Servicing**

- A. Impact of Bankruptcy Reform (BAPCPA) on bankruptcy filings.
  - 1. What happened to bankruptcy filings in 2006?
  - 2. Where will bankruptcy volumes be in 2007?
- B. Impact of alternative product loans on volumes.
  - 1. Arm resets.
  - 2. Interest only loans
- C. Impact of volumes on staffing the Bankruptcy Department.
  - 1. How many FTEs are needed?
  - 2. What is the level of required expertise?

### **II. Who May Be A Debtor**

- A. Credit counseling requirement and dismissal of the case.
- B. Striking the petition or dismissing the case.
- C. Is there a difference and does it matter?

### **III. New Notice Provision of BAPCPA**

- A. Advantages of Filing with the National Creditor Address Registry.
- B. Dis-Advantages?

### **IV. Automatic Stay Provisions**

- A. Termination on the 30<sup>th</sup> day after filing.
  - 1. Is the stay terminated on property of the estate?
  - 2. Is the debtor and/or property of the debtor protected?
  - 3. When is it safe to foreclose on a 30 day termination?
- B. No stay in effect.
  - 1. The necessity for a Comfort Order.
  - 2. When is it safe to proceed to foreclosure?
- C. Motion to Extend/Impose the Stay
  - 1. When to oppose such motion.
  - 2. Strategies for opposing.
  - 3. What does the judge really want to hear?
- D. Co-Debtor Stay
  - 1. Does the co-debtor stay of 1301 and 1201 arise if no 362 stay?
  - 2. The effect of the co-debtor stay if the 362 stay expires.
- E. In Rem Relief
  - 1. When to request.
  - 2. What do you have to prove to get relief?

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**V. Confirmation Issues**

- A. Requirement of payments in equal monthly amounts on personal property claims.
  - 1. How is this requirement affecting payments of the mortgage claim?
  - 2. Should the mortgage creditor object to a deferral of payments?
- B. Anti-modification of claims secured by the principal residence.
  - 1. Can a claim secured by a manufactured home be modified?
  - 2. Does the new definition of “debtor’s principal residence” offer protection from modification?
- C. When to object to confirmation

**VI. Payment Application and Section 524(i).**

- A. Did bankruptcy reform change how payments are to be applied?
  - 1. Order of application according to the loan documents.
  - 2. Order of application according to a confirmed plan.
  - 3. Which controls, loan documents or confirmed plan?
- B. What is willful failure to credit payments?
  - 1. Unapplied funds and suspense accounts.
  - 2. Is it appropriate to assess a late charge if ongoing payment not received timely?
- C. Trustee pay issues.
  - 1. Notification of ARM/Escrow payment change.
  - 2. Notification of servicing transfer.
  - 3. Payments pending plan confirmation and payments post confirmation.
- D. Reconciling servicer pay history and trustee payment ledger.
  - 1. How often should reconciliation occur?
  - 2. How to resolve differences
- E. Motions to deem mortgage current.
  - 1. How important are these motions?
  - 2. How to respond.

**VII. The Discharge Injunction and 524(j).**

- A. Sending mortgage statements post-discharge.
- B. Is loss mitigation “an act” permitted under 524(j)?