



## COVID-19's Impact on Commercial Litigation and Bankruptcy

### **Part I: Foreclosures and Evictions**

Connecticut state courts remain open but under severely reduced operations. Currently, the courts are only processing “Priority 1 Business Functions,” which, for purposes of commercial litigation, only include limited emergency motions. That means that all civil trials, trial management conferences, pre-trials, status conferences, J-ADR mediations, and short calendar matters have been cancelled so long as the judicial branch is limited to Priority 1 functions only.

For evictions and foreclosures, the judicial branch has ordered that:

- All issued executions on evictions and ejectments are stayed through May 1, 2020;
- All foreclosure sales scheduled in April and May are rescheduled to June 6, 2020; and
- All law days set to run in March, April, and May are amended to June 2, 2020.

These dates are subject to further extension at a later date.

Meanwhile, the federal Department of Housing and Urban Development has halted and suspended all foreclosures for homeowners with FHA-insured mortgages and ceased all evictions of persons from FHA-insured single-family properties until May 17, 2020. Additionally, Governor Lamont reached an agreement with over 50 credit unions and banks in Connecticut for a 90-day grace period for all mortgage payments, relief from fees and charges for 90 days, no new foreclosures for 60 days, and no credit score changes for accessing relief.

While other creditors and landlords are still permitted to commence new foreclosure and eviction proceedings to get that process started, they will be effectively prevented from completing these actions until the Courts resume their adjudication of civil matters.

## **Part II: Workouts and Bankruptcy**

Outside of bankruptcy, debtors and creditors are facing nonpayment and other default issues with regard to various obligations. Specifically, in the commercial lending world, parties are being proactive by negotiating to temporarily change terms in their agreements so as to weather the storm in a way acceptable to both sides, whether by forbearance agreements or outright amendments to their contractual terms.

COVID-19 has also affected liquidations. With social distancing guidelines and various state shutdowns, many retailers were forced to shutter operations. For businesses in the midst of the liquidation process, whether under the oversight of a bankruptcy court or not, COVID-19 has impacted the progression of their liquidation plans. Several United States Bankruptcy Courts are already entertaining suspensions of pending bankruptcies. At the end of March, the Modell's bankruptcy pending in the United States Bankruptcy Court for the District of New Jersey was suspended for one month. Bankruptcy Courts have not previously issued suspensions under these type of circumstance, but this suspension is likely not the last during these times and has already been cited by other businesses seeking similar relief.

Other liquidations, however, have been able to continue online, such as those in more specialty fields such as transportation, which have well established online platforms and buyers who are more accustomed to doing business in that manner. It is important to remember that every liquidation is different and will depend upon many factors, such as the type of collateral, location, and volume.

Bankruptcy courts, which are part of the federal judicial system, remain open under reduced operations. Hearings that might otherwise be held in person are now being conducted telephonically. Some bankruptcy courts are even moving towards conducting evidentiary hearings with live witnesses via videoconference. The U.S. Trustee's Region 2 office (CT, NY, VT) has also continued all "341 meetings"—which are the first instance where a debtor may be questioned under oath by creditors and the trustee—that were scheduled through April 10, 2020 to a later date to be determined.

The CARES Act, signed on March 27, will also have an effect on bankruptcy cases. Some key provisions include that payments made under the Act are not considered income for Chapter 7 or 13 cases and Chapter 13 debtors can seek modifications of their plans due to COVID-19 related hardships. Perhaps the most significant aspect of the CARES Act for bankruptcy is the temporary modification of the recently-enacted Small Business Reorganization Act of 2019 (SBRA), which allows small businesses to go through a Chapter 11 case in a much more streamlined manner.\* Under the Bankruptcy Code, a "small business" is limited to debts of \$2,725,625. The CARES Act increases that debt limit—for one year only—to \$7,500,000, thus opening up the SBRA to a much wider swath of businesses. This temporary increase, coupled with current economic conditions, could be a harbinger of increased bankruptcy filings in the near future.

\*The SBRA generally requires a plan to be filed with ninety days, which is much sooner than a typical Chapter 11 plan gets filed. There is also typically no creditor's committee and no disclosure statement requirement. A private trustee consults the debtor, but there is limited to no involvement from the U.S. Trustee and no U.S. Trustee quarterly fees. Owners may also be able to retain their interests in the business more easily than in a typical Chapter 11 case. All together, the SBRA provides a cost-effective alternative path through Chapter 11 for small businesses.

Please feel free to contact the following individuals at Updike, Kelly & Spellacy, P.C. who are part of the UKS COVID-19 Response Team with respect to creditor's rights and bankruptcy matters.

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Updike, Kelly & Spellacy, P.C. would like to thank Attorney Matthew Stiles for his contributions to this client alert.

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