CARES ACT CONUNDRUMS

THREE PRIMARY ISSUES

- Disposable income after 60 months and prepayment of a CARES modification.
- CARES Act forbearances and looming foreclosures.
- Dealing with defaults after March, 2022.

ELIGIBILITY TO FILE AN 84 MONTH MODIFICATION

- A debtor who is or has experienced a material financial hardship due, directly or indirectly, to the COVID pandemic.

AND

- A plan was confirmed prior to March 27, 2021.

§ 1329(d).

HOW MUCH PROJECTED DISPOSABLE INCOME MUST BE INCLUDED?

- The Projected Disposable Income Requirement is in § 1325(b).
- Section 1325(b) is not included in § 1329(d).
- Even if it were applied, it only requires the application of 60 months of disposable income.

- If there is NO projected disposable income requirement—or even a 60 month projected disposable income requirement—then why should a debtor pay out additional disposable income?
- Assume that a Debtor has $200.00 of monthly projected disposable income and $20,000 of unsecured debts, priority and administrative claims

- In a 60-month modification, a debtor would have to pay all secured claims plus $12,000 on other claims.
- There may be no projected disposable income requirement on a CARES Act modification or the Court may hold that a good faith requirement would not allow a reduction in the original $12,000 requirement.

Title search: CARES Act and other Tips for Debtor Representation

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