

## **Best Practices for SBRA**

### **Confirm Eligibility**

- May not be a Single Asset Real Estate - Section 101 (51B).
- Engaged in commercial/business related activities.
- Has no greater than \$2,725,625 in non-contingent liquidated debt.
- At least 50% of debt from commercial activities.

### **Make Election by Checking Box on Petition**

- If Debtor does not avail self of SBRA by making election, there will be no Initial Status Conference under Section 1188(a).
- If Debtor desires to make election after filing, it should make election prior to the 60 day Initial Status Conference deadline (60 days from filing of Petition).
- If election is made, Initial Status Conference will be within 60 days of Petition Date.

### **Prepare to Operate as Debtor in Possession Upon Filing**

- Address first day relief issues - more important typical ones include:
  - a. Cash collateral usage.
  - b. Utilities adequate assurance of payment under Section 366.
  - c. Wages.

### **Filing of Schedules and Statement of Financial Affairs**

- Timing of Filing:
  - File with Petition;
  - Within 14 days after Petition Date; or
  - Seek additional time (not to exceed 30 days from Petition Date).
- Given shortened time period (90) days for filing plan, best to have Schedules and SOFA completed as early in process as possible.

### **Required Documents to be Filed With Petition**

(“Small Business Filing Documents”)

- Most recent balance sheet.
- Statement of Operations.
- Cash Flow Statement.
- Federal tax return.
- OR statement under penalty of perjury that any of the foregoing has not been prepared or filed, as case may be.
- Prepare for Initial Debtor Interview with UST. In addition to items filed with Petition, usually need to provide:
  - certificates of insurance,
  - applicable licenses and
  - tax return extension (if applicable).

### **Working With Creditors and Subchapter V Trustee**

- Begin working with creditors on plan as soon as possible.
- Include Subchapter V trustee in discussions with creditors.
- Come to an understanding as to billing/fees of Subchapter V trustee (hourly, no-look, etc.).

### **Initial Status Conference and Bar Date**

- Prepare report under Section 1188(c) to be filed at least 14 days before Initial Status Conference.
- Coordinate with Court regarding Scheduling Orders for case (if necessary).
- Bar date will be 70 days from the Petition Date.

### **Cramdown Analysis**

- Evaluate disposable income for cram-down purposes, if it appears a consensual plan may not come to fruition. Disposable income is income of debtor that is not for:
  - Maintenance or support of debtor/dependent of debtor;
  - Domestic support obligation that first comes payable after Petition Date; or
  - Payment of ordinary course business expenses.

### **Plan Requirements**

- Plan must be filed within 90 days of Petition Date, and must include:
  - Brief history of debtor;
  - Liquidation analysis; and
  - Projections showing debtor's ability to make plan payments.
- No Disclosure Statement required, unless Court ordered.

### **Modification of Mortgage Debt - Analysis**

- Does debt include mortgage on principal residence?
  - Was it used to purchase residence?
    - If yes – cannot modify through Plan.
  - If not purchase money – was money borrowed used primarily for business purposes:
    - If yes – can modify through plan.
    - If no – cannot modify through plan under SBRA.

### **Difference Between Discharge Under Consensual or Cramdown Plan**

- Consensual Plan? Discharge (except Section 523(a) debts) upon confirmation.
- Cramdown Plan? Discharge (with exceptions) upon debtor making plan payments or minimum of 3 years up to five years as Court may order. Excepted from discharge:
  - Section 523(a) debts;
  - Debts on which last payment is due after first 3 years of plan (or longer on order of Court). \*\*If debtor wants discharge on particular debt, should ensure that last payment is made before 3 year date or other date if Court extends.
- Make certain administrative claims are paid before discharge or are covered by plan.

### **Professional Retention/Trustee Compensation**

- Retention – Section 327(a) counsel may still be disinterested with a prepetition claim of less than \$10,000. Counsel should address in Affidavit of Disinterestedness, if applicable.
- Compensation for trustee is under Section 330, like other estate professionals.

### **Distributions to Creditors**

- If cramdown plan – Subchapter V trustee makes payments unless Court orders otherwise.
- If consensual plan – debtor makes payments and Subchapter V trustee's duties conclude upon substantial plan consummation.

### **Service Issues**

- Seek to serve creditors at street addresses rather than P.O. Boxes to ensure proper service.

## Timeline of Important Deadlines/Events

### *As of Petition Date:*

1. Check box on petition if debtor wants to proceed under Subchapter V.
2. Have Schedules/SOFA complete/filed (or near completion).
3. Have first day motions ready to be filed.
4. Have required Small Business Filing Documents ready to file with petition.

### *Shortly After Petition Date:*

1. Speak with Subchapter V trustee:
  - a. About discussions with creditors;
  - b. Fees; and
  - c. Clear delineation of Subchapter V trustee duties (as provided under Subchapter V).
2. Prepare for Section 341 meeting and Initial Debtor Interview.

### *At 30 day mark:*

1. Have Schedules/SOFA filed.
2. Begin preparing initial report.
3. File Initial Report at least 14 days before Initial Status Conference.
4. Plan for upcoming Initial Status Conference.
5. Confirm whether any amendments to schedules are necessary; file amended schedules and serve in accordance with LBR 1009-1, if necessary.

### *At 60 day mark:*

1. Initial Status Conference will have occurred.
2. Bar date is approaching (70 days).
3. Plan should be in process:
  - a. Evaluate cram-down scenario, if consensual plan unlikely.
  - b. Evaluate dischargeability of claims – last payment due after 3 years?
    - i. Is it necessary to seek approval of longer time under plan from Court?

### *At 70 day mark:*

1. Plan should be almost ready to file, if not already filed.
2. Bar Date occurs.

***Between 70 days and 90 days from Petition Date:***

1. Evaluate claims filed for Plan purposes.
2. Prepare for service of Plan documents.
3. Complete and file Plan.

***At 90 day mark:***

Plan filing deadline.