

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH DAKOTA**



**CHARLES L. NAIL, JR.
BANKRUPTCY JUDGE**

UNITED STATES COURTHOUSE
400 SOUTH PHILLIPS AVENUE, ROOM 401
SIOUX FALLS, SOUTH DAKOTA 57104-6851

TELEPHONE: (605) 357-2430

VIA ELECTRONIC TRANSMISSION

September 10, 2020

To the South Dakota Bankruptcy Bar:

Since my message to you in the April 13, 2020 Bankruptcy ^Update regarding mortgage modifications under the CARES Act, it has become clear that little is clear. Many, if not most, of the proffered modifications have been forbearance periods with no definitive agreement on what the debtor's repayment obligation will be when the forbearance period ends. Further, many chapter 13 debtors are requesting a mortgage forbearance without first consulting with their bankruptcy attorney.

One thing remains clear: Any modification of a mortgage in an open chapter 11, 12, or 13 case will not be binding on the bankruptcy estate until it is court approved. In open cases with confirmed plans, I will leave it to the debtors' attorneys to determine the best time to seek a modification of the plan terms. In open chapter 11, 12, or 13 cases without a confirmed plan, any forbearance or other mortgage modification agreement will need to be included in the debtor's proposed plan.

Regarding court operations in general during the pandemic, all is going well. Court staff are keeping up, with some continuing to work from home and some in the office. And we greatly appreciate the bankruptcy bar. You have been doing an excellent job of ensuring evidentiary, in-court matters are kept to a minimum.

Finally, please remember, should illness strike you, your office, your clients, or your family, let us know, and we will offer whatever accommodations we can.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles L. Nail, Jr.", is written over a light blue horizontal line.

Charles L. Nail, Jr.
Bankruptcy Judge

CLN:sb

cc: general correspondence - Bankruptcy Bar