

This is the twenty-sixth in my series of newsletters. Due to your great interest, I plan to continue this quarterly report for my clients.

HOW BANKRUPTCY REFORM WILL AFFECT YOU.

On March 1, 2001 the US House of Representatives passes H.R. 333, and on May 15, 2001 the US Senate passed S 420. President Bush has made it clear once a compromise bill is put on his desk, he will sign it.

The major implication is the MEANS TEST. This is going to prevent many people from filing a Chapter 7 and getting a discharge on all their debts. Many people will be forced to pay back part of their credit card and other unsecured debt.

One reason that Chapter 7 will be much harder is that the debtor's attorney may be held responsible if the Chapter 7 is abusive. The means test determines your ability to pay back your debts based on totally unrealistic standards. Current income is based on your average income over the last six months. Excluding social security benefits, you must include all sources of income.

Second, the means test looks at your expenses. However, this is not your normal monthly expenses since it is based on the Internal Revenue Service's National and Local Collection Standards. These standards impute expenses that are usually much lower than you actually spend. Finally, you subtract 1/60 of all secured debt (such as car payment, mortgage, etc.) due in five years. Also, add 1/60 of all priority debt such as taxes.

Abuse is presumed if you have at least \$166.67 in monthly income after allowed deductions. Abuse is also presumed if you have at least \$100 in monthly income after deductions. There is a presumption of abuse if you have unsecured debts of \$24,000 or less; if you have \$150 in monthly income after deductions. There is a presumption of abuse if your unsecured debt is \$36,000 or less and if you had over \$200 per month, there is an automatic presumption of abuse. In order to rebut the presumption, you would have to document "special circumstances" that would increase expenses or decrease income.

Please note the means test does not apply if your annual income is less than a similarly sized family in your state. The result of the means test is that a lot of honest hardworking people who through no fault of their own got into debt, will be prevented from filing Chapter 7 and will have to pay back some of their debt in Chapter 13.

Another major change is credit counseling and debtor education. In order to be eligible to file Bankruptcy under any Chapter of the Code, you must receive credit counseling within 180 days of the Bankruptcy filing, through a service approved by the US Trustee or Bankruptcy Administrator, which should be provided by telephone or internet. The only exception would be 1) for districts where adequate services were unavailable and 2) where you had an exigent or emergency situation which required filing a Bankruptcy petition before counseling

could be obtained within five days after you requested consumer credit counseling. If you qualified for “exigent” circumstance, you would then be required to complete the counseling within 30 days after the Bankruptcy filing.

The biggest concern is what may constitute “exigent circumstances”. If you have a sheriff sale within 2 days of when you consult with me, and didn’t receive debt counseling within the last 180 days, there may be an issue whether the sheriff sale constitutes “exigent circumstances”. A liberal Judge would hold that a sheriff sale constitutes an emergency, however, a conservative Judge would hold that the debtor was on notice of the foreclosure sale and the foreclosure was proceeding for months. Thus, there is not exigent circumstance.

This same analysis can be utilized for a lock out for a rental unit or a repossession of an automobile. Even though these are emergent situations, the other side of the coin is that the debtor knew or should have known that actions by the creditor were imminent due to non-payment. Finally, in order to get a discharge in Chapter 7 or 13 you would have to complete an instructional course concerning personal management. There is no black or white answer to these circumstances but we will have to see how the Judges rule on these matters.

One of the most pro-creditor and anti-debtor provisions of the proposed law deals with the automatic Stay. If a Chapter 7, 11 or 13 case is filed within one year of dismissal of an earlier case (other than a Chapter 11 or 13 case filed after a section 707 (b) dismissal), the automatic stay (which prevents actions by creditors) terminates within 30 days after the new filing. In addition, if a third filing takes place within the one-year period, the automatic stay does not go into effect at all.

In the first situations, the lawyer for the debtor will have to file a motion to reinstate and continue the Stay. There will be a full-blown hearing showing that the second filing was filed in good faith. There are certain presumptions that will have to be overcome. The same procedure would have to be done with a third filing to reinstate the Stay.

Thus, refilings are not denied, it will just put a harder burden on you to show that a second or third filing was done in good faith such as illness, job loss or other extenuating circumstances outside your control.

LET ME ANSWER ALL YOUR QUESTIONS

As my law practice continues to grow, I hope to help you in all areas of the law where I have helped my other clients. Remember, even if I am not familiar with a specific area of the law, I work with other lawyers who are well qualified to handle these matters. Therefore, if you have any question on any legal matter whatsoever, please ask me about it.

IF YOU LIKE MY WORK, SPREAD THE WORD.

I appreciate the confidence my clients show by referring new business to me. Such referrals are my largest and best source of new clients. Please let me know if you have a friend or relative who needs legal assistance or who would like to receive one of my quarterly newsletters.

I sincerely appreciate all the referrals from so many of you over the past several years. Thank you for your continued confidence and good will.

If you would like me to speak at your organization or place of worship, feel free to contact me.