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IF YOU HAVE IGNORED PAST NEWSLETTERS, PLEASE READ THIS ONE, THE INFORMATION IN THIS ARTICLE WILL DRASTICALLY IMPACT ON PEOPLE'S LIVES.

BANKRUPTCY REFORM WILL BECOME LAW ON OCTOBER 17, 2005

On April 20, 2005, President George W. Bush signed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

This new law is the most drastic bankruptcy reform in years and shifts the whole notion that bankruptcy was to help honest debtors get a fresh start. It presumes abuse if your income is above the means test.

One of the focal points of the new law is the means test. The means test is based on your State's median income and your current monthly income. Current monthly income is you and your spouse's income plus any other income over the last 6 months. Hence, if you just lost your job, the formula may plug in unrealistic fictitious numbers that are not your real expenses. Also, if you have a high salary but high additional expenses, it is your burden to dispute the presumption of abuse.

The statute allows the trustee to go after your attorney if abuse exists. Because of all these additional requirements and work, I predict it will be much more costly to file bankruptcy under the new law. The days of "I want to file a Chapter 7" are gone since every case must first have a means test analysis.

Another major requirement is that in order to qualify as a debtor, under section 109, you must have had consumer credit counseling in the last 180 days. The counseling must be with a qualified, non-profit agency approved by the US Trustee's office.

One of the most drastic changes to the New Act is the automatic stay. Under the present law, the whole purpose of the stay is to give protection to debtors against creditors who are trying to take their property.

Under the present law, there are eighteen exceptions to section 362: the New Act now has 26 exceptions.

The biggest change, in my opinion, focuses on homeowners who have had a previous Chapter 13, which was dismissed within the last year. Now, when you file a new Chapter 13 to save your home, the stay only lasts for THIRTY DAYS after the refiling of a dismissed case. This means that your lawyer has to file a Motion to Reinstate the Stay since there is a presumption of bad faith. You have to show by clear and convincing evidence why your change of circumstances will make the new case work.

If you had 2 cases dismissed within the past year, there is even more of a burden to show since the stay won't apply to any creditors. Your lawyer must overcome the presumption of bad faith by filing a Motion to Reinstate the Case as to ALL creditors. Again, the burden is clear and convincing evidence.

Finally, another drastic change in the law will affect tenants who are behind on their rent. Presently, I have helped many tenants who need to cure rent arrears. However, the new Act will not allow the stay to stop an eviction after a judgment of possession is entered.

I won't outline all the provisions of this law in this issue, since it is over 500 pages long. However, a major change eliminates the super discharge provisions that Chapter 13 allowed. For example, everything but support, restitution, student loans, or death or personal injury by driving under the influence, were dischargeable under Chapter 13. Now all the exceptions to discharge under Chapter 7 will apply to Chapter 13 under the new Act.

I wish you all the best in the brave new world of Bankruptcy Reform.

Steven N. Taieb has been Board Certified in Consumer Bankruptcy Law by the American Board of Certification since 1994. He has helped over 5,000 people resolve their legal problems.

LET ME ANSWER ALL YOUR QUESTIONS

We are a full-service law firm which wants to service your legal needs. In addition to helping individuals with financial problems, our office helps people with all types of motor vehicle violations, work-related injuries, and any other personal injuries.

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 may not be familiar with a specific area of law, I can refer you to a lawyer who is well qualified to handle your matter. Therefore, if you have any question on any legal matter whatsoever, please contact me at 856-235-4994 or sntgale@aol.com.

IF YOU ARE A SATISFIED CLIENT, SPREAD THE WORD

I appreciate the confidence my clients show in me 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 for me to conduct a workshop and discuss *The Debt Trap* at your church or other community group, feel free to contact me at 856-235-4994 or sntgale@aol.com.

