

# BANKRUPTCY LAW WILL HAVE IMPACT ON REAL ESTATE

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It is no longer easy to erase your debts - including your home mortgage - as a result of the recently enacted Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. On Wednesday, April 20, 2005, President Bush signed into law the most significant overhaul of the Bankruptcy laws since 1978.

The law became effective October 17, 2005, although there are some provisions which have already taken place as of the date of enactment. It is a complex - and controversial - law, which will take time to study and understand.

The National Association of Realtors applauded Congress for passing several real estate provisions which are included in the new Act. On the other hand, consumer organizations - such as Consumer's Union and the Consumer Federation of America - are in opposition to the law, stating that "it would favor creditors at the expense of Americans who have suffered genuine financial misfortune."

Only time will tell what the real impact of this new law will be

on the American consumer. In the meantime, here is a short summary of the provisions which are relevant to the American homeowner.

Perhaps the most important aspect of the Act is the "means test," which must be applied when the Bankruptcy Judge is deciding whether or not to discharge consumer debt. Oversimplified, there are two avenues that a consumer in financial trouble can take: Chapter 13 is an interest-free repayment plan, whereby all of your debts are consolidated, and the consumer makes payment on this debt over a three to five year period. While the consumer is in such a Chapter 13 debt plan, his creditors cannot collect directly from the consumer, and creditors are legally obligated to honor that plan.

Chapter 7, on the other hand, is a plan whereby all of your unsecured debts are wiped out. If your car and mortgage payments are current - and there is no significant equity in your property - the consumer is allowed to keep those items.

Bankruptcy attorneys who represent creditors have long complained that Bankruptcy judges currently have complete discretion as to whether to eliminate consumer debt - regardless of the financial situation of the debtor.

The new law imposes a "means test." If the combined gross income of the consumer's family is greater than the median family income

in your state, the law may require that you file a Chapter 13 plan and pay off your debts over a three to five year period, rather than file for Chapter 7 relief. For example, in the District of Columbia, this amount is currently \$61,800. In Virginia, it is \$69,600, but in Maryland it is \$82,880 (for a complete State-by-State listing go to <http://www.census.gov/hhes/income/4person.html>).

Bankruptcy Judges are permitted to reduce unsecured consumer debt - usually credit card obligations - by up to 20 percent, if the creditor refuses to accept and negotiate a reasonable alternative repayment schedule which has been proposed by an approved credit-counseling agency.

A second important aspect of the new law, a requirement that before anyone can file for bankruptcy relief, they must submit to counseling from an approved non-profit credit counseling agency.

Consumer debt has been estimated to be approaching \$2

trillion. Millions of Americans are facing serious financial difficulties - and are jobless. According to the Administrative Offices of the U.S.

Courts, over 1,137,000 people filed for Chapter 7 bankruptcy, while almost 450,000 filed for Chapter 13 relief.

However, not all consumer credit counseling agencies will be approved. In recent months, the Internal Revenue Service and the Federal Trade Commission have successfully prosecuted several such agencies - all of whom masqueraded as non-profit organizations, while in reality they were gouging consumers and making a large profit for themselves.

The National Conference of Commissioners on Uniform State Laws is currently considering the adoption of the Uniform Consumer Debt Counseling Act, which - if enacted throughout the state legislatures in this country - will address the multitude of problems that have developed, and will enable the states to take a uniform approach to regulation of this industry.

Bankruptcy should always be the last resort for any consumer in financial difficulty.

However, this new Act will make it even less of an attractive option. If you are in financial difficulty, don't wait until the creditors come knocking at your door - or at the courthouse door. Talk to your financial and legal advisors immediately, so as to determine all of your options before it is too late.

The Bankruptcy Act is new, and will clearly require time for all of us to study its full impact. Here are some additional provisions which impact real estate activities:

- Condominium and homeowner association members are required to pay their regular fees, even if they have filed for bankruptcy relief.
- If a landlord obtains a judgment for possession against a tenant, the debtor-tenant must certify that he has a legal defense, and must pay the entire rent owed within 30 days.

