

## **DEVELOPMENTS IN BANKRUPTCY LAW**

**Student Loan Discharges:** Congress is considering legislation that would eliminate dischargeability of student loans for baccalaureate and graduate degrees over seven years old. The bill would likely still allow discharge on basis of undue hardship.

**Religious Liberty and Charitable Donation Protection Act of 1998:** This act prevents bona fide and reasonable religious and charitable contributions from being attacked and recovered from the donee as fraudulent transfers. It allows debtors to make religious and charitable contributions while filed for Chapter 7 or 13 protection.

**H.R. 3150 and Length of Minimum Chapter 13 Plan:** The bill would increase the minimum Chapter 13 plan from 3 to 5 years for above median income and from 5 to 7 years for all other income levels.

**S. 1301 and Lawyer Sanctions for Bankruptcy Claims:** The bill proposes making lawyers pay trustee fees for filing bankruptcy claims that aren't substantially justified.

**Powers v. Price - Ability of Creditors to Attack Funds Contributed to a Profit Sharing Plan:** Debtor contributed to a profit sharing fund where funds aren't reachable by his creditors. However, due to a technicality he was not allowed to contribute to the fund and thus all funds he had already thought were safely sheltered inside the fund were now reachable by his creditors.

**Leased Commercial Property:** Proposed legislation that would curtail the rights of a bankrupt debtor with regards to leased commercial property.

**Small Businesses:** Proposed legislation that would provide simplified disclosure and confirmation process for small business debtors with a reasonable likelihood of reorganization, but prompt removal from the process via dismissal or conversion for those with little or no prospect of reorganization.

**Single Asset Real Estate:** Proposed legislation with a "New Value Exception" plan that would allow debtor's equity holders to make a contribution of new capital as

part of a reorganization plan in exchange for an interest in the reorganization entity.

**Debt Counseling:** Proposed legislation that would provide government sponsored debt counseling for consumer bankruptcy.

**Lien Stripping:** Proposed legislation that would apply prohibitions against lien stripping under Chapter 13 to claims secured primarily by a security interest in property used as the debtor's principal residence.

**Miscellaneous Proposed changes:**

- (1) Making more **debts nondischargeable**.
- (2) Further protecting **lessors and purchase money secured creditors**.
- (3) **\$100k cap on exemptions** for real or personal property.
- (4) **Setoff income tax returns** until disputes are settled.

**Johnson v. IRS: Collection of Post-petition Interest:**

IRS is entitled to collect from a debtor post-petition interest accruing on nondischargeable taxes from the filing date of the bankruptcy petition. The debtor is entitled to credit for any payments made, as of the dates paid, applicable first against accrued interest, then the balance.

**Sherman v. P.J.Rose: Avoidance of a Tax Sale of Real**

**Property:** (10th Circuit) **HOLDING:** Chapter 11 debtors are entitled to the avoidance of a tax sale of their real property, which occurred within one year preceding their bankruptcy, because the transfer was not for reasonably equivalent value.