



## THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

On October 17, 2005, the most sweeping reform of the Bankruptcy Act ever proposed goes into effect. This article is intended to be a brief overview of the highlights of the Bankruptcy Reform Act.

The act's primary purpose is to implement a "needs based" bankruptcy system. Based upon the notion that persons should take personal responsibility for their debts, its primary effect is to make it more difficult and more expensive to seek relief in bankruptcy.

Traditionally, Chapter 7 bankruptcies involved a quick discharge of most debts, after non-exempt assets of the debtor were sold and the proceeds paid to creditors. Under Chapter 13, the debtor makes payments from post-filing income under a plan of repayment for 3-5 years. The act makes Chapter 7 bankruptcies for individuals the exception, rather than the rule, and it forces a Chapter 13 scenario on many debtors who would have traditionally filed under Chapter 7.

Prior to seeking relief, debtors must now undergo credit counseling from an approved counseling service. The counseling service will propose a plan to repay creditors outside of the bankruptcy system. If the plan is feasible, the debtor is encouraged to use the counseling service to repay the debtor's debts. If the plan is not feasible, the debtor can file for bankruptcy.

The act forces a debtor into a Chapter 13 repayment plan by applying a "means test". Under the means test, if the debtor's gross income for the 6 months preceding the bankruptcy exceed the median income for the debtor's home state, a Chapter 13 is required. Also, if the debtor's monthly income after deductions exceeds \$167 per month, or if it exceeds \$100 per month and it is sufficient to repay 25% of the debtor's unsecured debt over 5 years, Chapter 13 is required. The act places strict limits on allowable expenses, and it imposes a tight budget on debtors. Luxury items are not allowed. If a debtor's income is less than the median, the means test does not apply, but the trustee can still limit allowable expenses.

The act revises the rules regarding how frequently a debtor can file for bankruptcy. Chapter 7 debtors now must wait 8 years to file again. Chapter 13 debtors cannot obtain a discharge until 4 years have passed from a prior Chapter 7 filing, and until 2 years have passed after a prior Chapter 13 filing.

The act provides increased protections for landlords and secured creditors. The act further limits both the dischargeability of taxes and the dischargeability of debt allocations in divorce. The act also requires the debtor to pay 100% of child and spousal support obligations to obtain plan confirmation.

Stewart, Shortridge and Rothman, P.C. represents both creditors and debtors in bankruptcy proceedings. If you have a need in this area, please give us a call.

About the author: Scott Fitzke is Special Counsel to the firm and his practice areas include Civil Litigation; Wills, Trust and Estates; Probate; Real Property; Entertainment Law; and Business Law.

## S U M M E R 2 0 0 5

Recent failure of many public emergency plans on the Gulf Coast only underscores the need for personal preparedness.

Successful implementation of any plan requires that it be well documented, communicated and rehearsed and that all participants be committed to its purpose. If you have not completed a family disaster plan addressing basic safety and survival issues, we urge you to seek out "how to" resources from a reputable source like the American Red Cross website at <http://www.redcross.org/services/disaster>.

Having addressed physical survival, then what? Disasters certainly come in all kinds of packages and many go beyond the whims of nature. Your family should have a written emergency plan that addresses what each member should do in all kinds of crises; both during and after. Be sure to rehearse this plan with them and be in agreement on its implementation.

As you assess your readiness, do not forget that your written plan and all other important family papers should be protected in a fire-proof box or safe kept in a location known to those who will need them. Some of the items you might place in your box are: birth certificates, social security cards and passports; wills and trusts; powers of attorney and medical declarations; HIPAA authorizations and releases; insurance cards and documents with proof of assets (photos, videos, receipts); contracts, live notes, deeds, titles, stocks and bonds; a contact list of important people including your attorney, doctors and insurance agents; bank and asset account information; safe deposit box keys; and, a computer back up of crucial files.

Having a plan is the single most important thing you can do to prepare for the emergency we all hope that we shall never see. We urge you to spend some time this fall putting your plan into place and encourage you to give generously to your charity of choice to support those cleaning up the catastrophes on the Gulf Coast.

Best regards,

*Curtis Shortridge*

## Whether to Dread to Shred

A massive by-product of business today is information. Fortunately, electronic storage has become efficient, inexpensive and simple to use, replacing yesterday's warehouses of paper files with sleek file servers the size of a suitcase. However, just because you have the capability to save everything, should you?

What policy does your company have for data retention and destruction? What files do you keep and why? Which files does your company discard? When do you discard them and how? How does your company control the files that are left? These answers will depend on what your business is, what type of data you have, and where your business is located.

A growing body of federal and state law requires companies to preserve specific data for proscribed periods of time. You should comply with any applicable state and federal law. For example, heightened responsibilities exist for medical records, financial records, and employee and client information. These obligations may vary from state to state. You also may have obligations from

agreements, licenses, and your risk management policies. The failure to abide by the laws and regulations applicable to your particular business can subject your company to fines, penalties, and may even result in personal liability.

Already have a policy? Have you considered how your company stops the destruction process when you become aware of the need to preserve certain data? The failure to stop the destruction after you are aware, or should have been aware, of a problem may have a negative impact on you or your company. While it may be impossible to completely eliminate one's exposure, a well crafted data retention and destruction policy can reduce the risk associated with saving too much or too little of your company's data. We look forward to assisting you with strategies to comply with this growing area of law.

About the author: Brian R. Becker received his J.D. from the University of Denver, College of Law in 2004 and his primary practice areas are Civil Litigation, Real Estate Law, Business Law and Insurance Defense.

## DO YOU NEED A SPEAKER?

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