



BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

Presentation to the
Los Angeles Southwest Chapter of California
Credit Union Collectors Council
April 20, 2006

By
Elizabeth F. Rojas
Chapter 13 Trustee



Agenda



- ◆ Overview of New Act
- ◆ Impact of New Act on Creditors
 - Secured
 - Unsecured
- ◆ Role of Creditors in the Bankruptcy Process
 - Written Objections
 - Proofs of Claim

Overview of New Act

- ◆ On April 20, 2005, President Bush signed into law the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.
- ◆ The Act took effect 180 days after enactment (October 17, 2005) with a few key exceptions.
- ◆ The Act focused on consumer versus business bankruptcy .
- ◆ It made it more difficult for the consumer and provided more protection for creditors.

Additional debtor requirements:

- Mandatory Credit Counseling prior to filing
- Must pass the “means test” for chapter 7 eligibility if not forced into a chapter 13.
 - Any individual’s income that is greater than the state’s median income is subject to means testing.
- Must have filed all tax returns for the last four years.
- Must provide a copy of the tax returns to the Trustee and creditors that request them.

Interim Rule 4002 – Duties of Debtor

- ◆ 4002(b) (4) Tax Returns Provided to Creditors.

If a creditor, at least 15 days before the first meeting of creditors, requests a copy of the debtor's tax returns, including any attachments, debtor shall provide the documents to creditor, subject to procedures for safeguarding the confidentiality of the tax information.

11 U.S.C § 1307

§ 1307 Conversion or dismissal.

- ◆ *Upon failure of the debtor to file a tax return under section 1308, on request of a party in interest and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is the in best interest of creditors and the estate.*

Serial filings

11 U.S.C § 1328. Discharge

- ◆ *Debtors cannot obtain a discharge of their debts in a Chapter 13 case if they have obtained a discharge in a Chapter 7, 11, or 12 in the previous 4 years, or if they have obtained a chapter 13 discharge within the previous 2 years. A chapter 7 discharge is only available every 8 years.*

Automatic Stay

- ◆ If 1st filing: stay in place unless Judge orders differently.
- ◆ If 2nd filing w/in one year: stay expires 30 days after petition filed; must be ruled w/in 30 days to extend.
- ◆ If debtor had 2 or more cases pending w/in the previous year; no automatic stay; must request court permission.

Automatic Stay

- ◆ Automatic Stay does not apply to:
 - W/holding of income for payment of domestic support
 - W/holding, suspension or restriction of licenses upon non-payment of support
 - Interception of tax refund to collect support obligations
 - Creation or perfection of a statutory lien
 - Consensual w/holding of income to repay retirement loans.

Exemptions

- ◆ Retirement accounts are generally exempt.
- ◆ Homestead exemption limited to \$125,000 with some exceptions
- ◆ Exemptions based on the state the debtor lived in for 2 yrs preceding bankruptcy; if debtor changed states w/in 2 yrs, where debtor lived 6 months prior to 2 years applies

Adequate Protection Payments

- ◆ §1326(a)(1)(C) Adequate Protection Payments w/evidence to trustee –
 - *Provides adequate protection payments directly to a creditor holding an allowed claim secured by personal property ...and providing the trustee with evidence of such payment, including the amount and date of payment.*
 - Form: F 3015-1.10- Declaration Setting Forth Post Petition Payments on: 1) Leases of Personal Property, 2) Purchase Money Security Liens in Personal Property

Impact of New Act on Creditors

- Secured Creditor
 - Debtor required to make post petition on-going monthly payments for real property(mortgage) and; adequate protection payments for personal property (such as a vehicle)
 - Debtor required to file with the court proof of such payments
 - Creditor may request proof of insurance on personal property.

Car Loans

- ◆ §1325 states:

... section 506 shall not apply to a claim ... if the creditor has a purchase money security interest securing the debt ..., the debt was incurred within 910 days preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle...

Translation

- ◆ If a car was purchased within 910 days of the filing of the petition, the creditor could receive the amount due on the loan; not the value of the collateral.
- ◆ Practical enforcement of the provision is on the creditor.
- ◆ If debtor proposes to pay car debt through the plan, debtor states the dollar amount. Unless the creditor objects or files a proof of claim, Trustee pays on amount stated.

Unsecured Loans

- ◆ Debtor required to pay unsecured creditors based on:
 - Best efforts
 - Means test (if applicable)
 - Liquidation analysis

Requirements for payment

- ◆ Debtor required to notify all creditors of meeting of creditors and the confirmation hearing and identify the intended treatment of a claim.
- ◆ To receive payment on an unsecured debt, a creditor *must file a proof of claim.*

Creditor's Duties

- ◆ Review the debtors plans and schedules and:
 - Submit a written objection if debtor schedules appear to be inaccurate or the treatment of the debt is incorrect.
 - Trustee reviews all written objections and can be helpful to assist in the identification of fraudulent or criminal activities.

Proof of Claim

- ◆ Trustee will pay based on filed stamped proof of claim. Creditor must:
 - File a proof of claim
 - Serve a copy of the filed stamped proof of claim with the Trustee
- ◆ Unsecured claim must be filed prior to the claims bar date which is 90 days after the 341(a) Meeting of Creditors.
 - Date appears on the **“Notice Of Chapter 13 Bankruptcy Case, Meeting of Creditors & Deadlines”**

Payment to Creditors (Secured Debt)

- ◆ Payments are determined based on:
 - The amount of the secured debt stated in the plan or the filed proof of claim. Proof of claim is the governing document if different than the plan.
 - The interest to be paid is based on the confirmed plan not the interest stated by the creditor.

Payment to Creditors (Unsecured Debt)

- ◆ Amount of Unsecured debt based on the **filed** proof of claim.
- ◆ The percent to be paid of the unsecured proof of claim to be determined by the confirmed plan from 0% to 100%.

Schedule of Payments to Creditors

- ◆ Plan must be confirmed or Trustee must have an entered order to make any payments.
- ◆ After plan confirmed Trustee starts to make payment to
 - Debtor attorneys if fee application is approved
 - Secured debt as stated in the plan

Payments

- ◆ Trustee prepares a Notice of Intent to Pay Claims(NIPC) based on filed proofs of claims.
- ◆ A copy is filed with the court and sent to the debtor and the debtor's attorney.
- ◆ Trustee waits 60 days for any objections to be filed.
- ◆ If no objections filed. The claims will be set up for payment.

Discharge

- ◆ To receive a discharge in a Chapter 13 case debtor:
 - Must comply with the confirmation order
 - Must pay all secured and priority debt and the designated percent to unsecured.
 - Must complete a financial education class

Discharge

All creditors receive a Notice of Intent to File Final Report

- Creditors should review the Notice of Intent to File Final Report (NIFFR) for accuracy.
- Creditor has 30 days to object to NIFFR.
- If no objections received; debtor is eligible for discharge.

General Observations

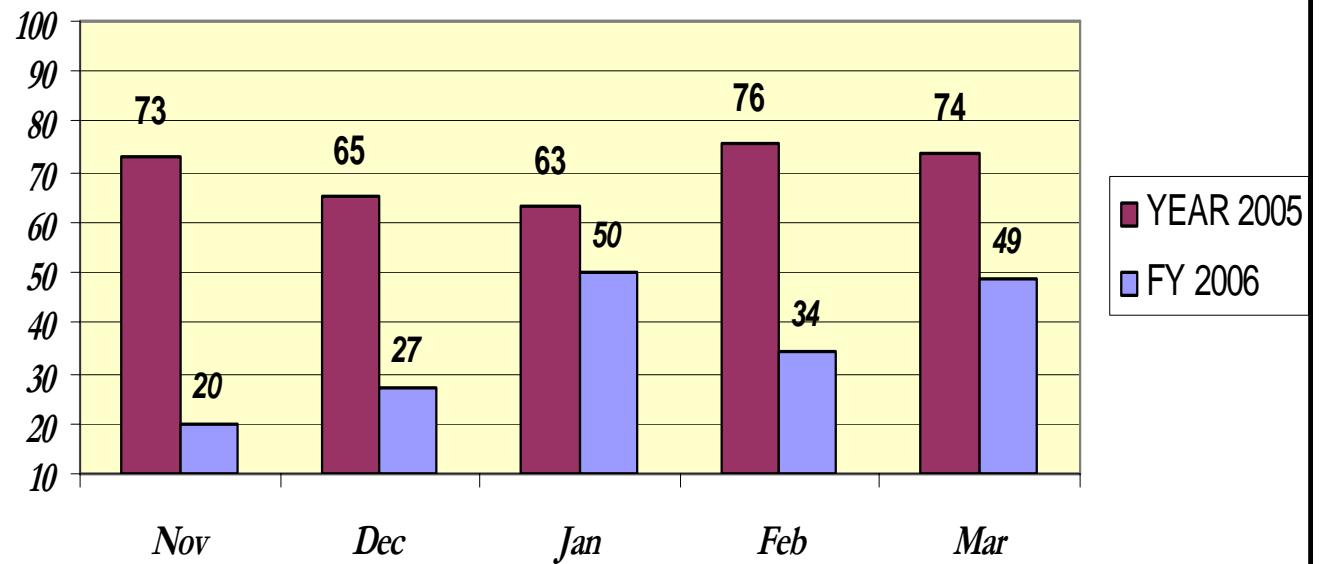
- ◆ Creditors do not file proofs of claim on unsecured debt.
- ◆ Creditors do not do a change of address with the court and serve a copy of the change of address with the Trustee.
- ◆ Trustee unable to locate creditor so funds are sent to the Court as unclaimed funds.

Concluding Remarks

- ◆ The new law is a powerful new tool for creditors.
 - Creditors have more access to debtor information.
 - Car loans based on value of loan versus value of collateral if purchased within 910 days of filing.
 - Means test may require some repayment to creditors.
- ◆ The new law currently appears to have reduced the number of bankruptcies filed.

MONTHLY FILINGS

MONTHLY FILINGS - FY 2005 VS FY 2006





Resources



- ◆ www.ch13wla.com
- ◆ www.pacer.psc.uscourts.gov
- ◆ www.uscourts.gov



The End