

ກົດໝາຍລົ້ມລະລາຍປີ 2005

THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005:

Frequently Asked Questions

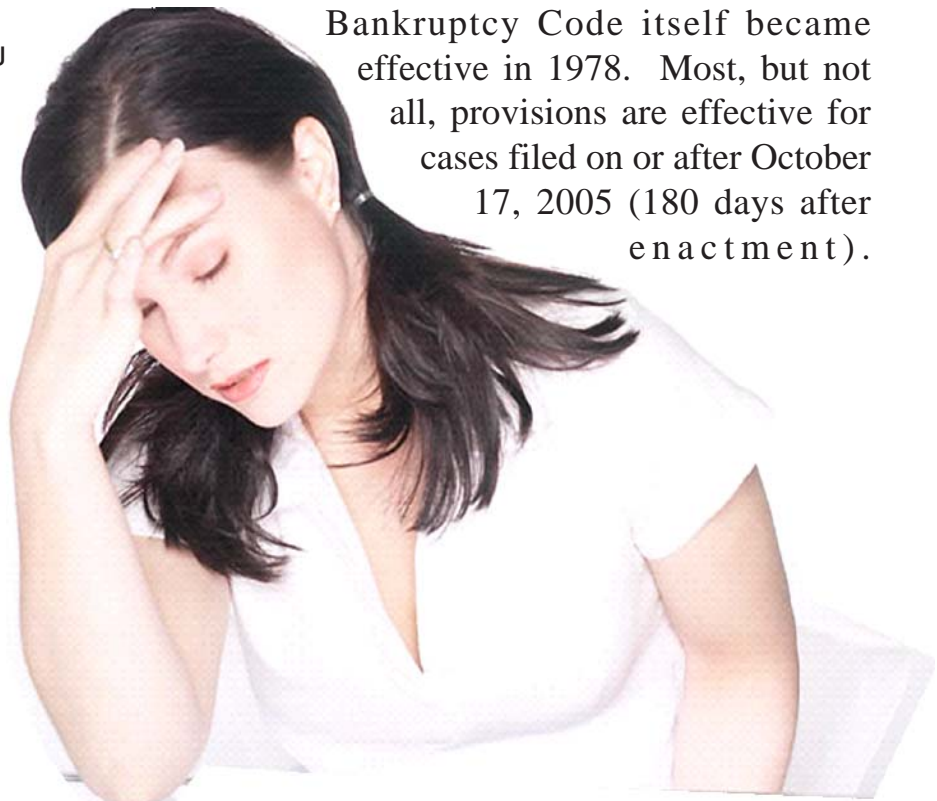
by Into Bo CHAMPON, Esq.

ໂດຍທະນາຍອິນໂຕ ຈຳພັນ

This article will attempt to answer two of the most frequently-asked questions about the new bankruptcy law: when it took effect and how much more difficult it is to file for Chapter 7 bankruptcy protection under the new law.

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was signed into law on April 20, 2005, and made the most radical changes in bankruptcy law since the Bankruptcy Code itself became effective in 1978. Most, but not all, provisions are effective for cases filed on or after October 17, 2005 (180 days after enactment).

ປະທານາທິບໍດີບຸສໄດ້ເຊັນກົດໝາຍລົ້ມລະລາຍ
Bankruptcy Abuse Prevention and
Consumer Protection Act of 2005
(BAPCPA) ໃນວັນທີ່ 4 ເມສາ 2005
ແລະເຮັດໃຫ້ມີການປ່ຽນແປງກົດໝາຍ
ລົ້ມລະລາຍຢ່າງເປັນປະວັດການ
ແຕ່ກົດໝາຍ Bankruptcy Code
ນີ້ເລີ່ມໃນປີ 1978. ຂໍ້ຄວາມສ່ວນຫລາຍ
ແຕ່ບໍ່ໝົດຈະເລີ່ມໃຊ້ເປັນກົດໝາຍສຳຫລັບ
ຄະດີທີ່ຍື່ນສານວັນທີ່
17 ເດືອນສິບ (ຕຸລາ) 2005
(180 ມື້ຫລັງຈາກກົດໝາຍຖືກເຊັນ).



Many bankruptcy legal experts opined that the BAPCPA is primarily in favor of creditors, poorly written and unsettling. Although there are many other important changes, there are some important basic changes which would affect those who typically filed for Chapter 7 bankruptcy protection under the old law.

Within 180 days prior to filing the bankruptcy petition, the debtor is required by the new BAPCPA to complete a credit counseling class through an approved non-profit budget and credit counseling agency unless the U.S. Trustee for the debtor's district has determined that there are no such counseling agency in the district available to provide this service to the debtor. The briefing may be delayed for a period of 30 days after the petition date (or up to 45 days if approved by the court) if the court is satisfied with the debtor's certification that there are exigent circumstances meriting a waiver and that the debtor requested but was unable to obtain such briefing within five days after the request.

The BAPCPA introduced new penalties for an individual Chapter 7 debtor's failure to file certain required information. If the debtor does not file the required information within 45 days after the petition date, the case is subject to automatic dismissal on the 46th day after the petition date. If the debtor so requests within 45 days after the petition date, the court may extend the deadline for filing the required information for an additional period not to exceed 45 days if the court finds that the debtor's request is justified. If an individual debtor in Chapter 7 or 13 case fails to provide a copy of his or her most recent federal tax return to a creditor on request at the same time that the debtor provides a copy of such return to the trustee, the case is subject to automatic dismissal unless the debtor can demonstrate that the failure to provide the copy is due to circumstances beyond the debtor's control. There are also new limitations on the homestead exemption. The trustee may avoid any transfer of an interest of the debtor in property in certain transactions that was made on or within 10 years before the date of the filing of the petition.

One of the most controversial changes is the "means testing" of individual Chapter 7 debtors to determine whether their cases qualify under the Chapter. If the debtor's net income exceeds specified levels based on a statutory formula, the debtor's Chapter 7 case is subject to dismissal for abuse or, with the debtor's consent, conversion to Chapter 11 or 13. The clerk has the duty to notify creditors of the presumption of abuse.

If the combined current monthly income of the debtor and the debtor's spouse, multiplied by 12, as of the petition date, is equal or less than the applicable state median family income, neither the court, the U.S. trustee, the bankruptcy trustee, nor any party in interest has standing to bring a motion based on the means test presumption of abuse. This new standing requirement somewhat ameliorates the impact of the means test in high median family income states such as California. The Median Family Income in California is as follows:

CALIFORNIA MEDIAN FAMILY INCOME BY FAMILY SIZE

(in 2004 inflation-adjusted dollars)

Universe: FAMILIES

Data Set: 2004 American Community Survey

Estimate	Lower	Bound	Upper Bound
Total:	58,327	57,535	59,119
2-person families	53,506	52,502	54,510
3-person families	59,633	57,696	61,570
4-person families	68,310	66,511	70,109
5-person families	56,591	54,827	58,355
6-person families	56,929	53,974	59,884
7-or-more-person families	58,395	54,536	62,254



Under the BAPCPA, no document should be filed unless the debtor and the debtor's attorney have made "reasonable inquiry to verify that the information contained in the document is (1) well grounded in fact and (2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." The attorney who represents Chapter 7 debtors, must now certify that the attorney "has no knowledge after inquiry" that information in the debtor's schedules attached to the petition is incorrect.

In summary, the short answer to the last question is that the BAPCPA is more complex and will require a lot more documentation and works from the attorney and the debtor. As the law is unsettling, many aggressive creditors will be more willing to challenge the discharge.

ປະທານາທິບໍດີບຸສໄດ້ເຊັນກົດໝາຍລັມລະລາຍ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) ໃນວັນທີ່ 4 ເມສາ 2005 ແລະເຮັດໃຫ້ມີການປ່ຽນແປງກົດໝາຍລັມລະລາຍຢ່າງເປັນປະຫວັດການ ແຕ່ກົດໝາຍ Bankruptcy Code ນີ້ເລີ່ມໃນປີ 1978. ອໍ້ຄວາມສ່ວນຫລາຍແຕ່ບໍ່ໝົດຈະເລີ່ມໃຊ້ເປັນກົດໝາຍສໍາຫລັບຄະດີທີ່ຍື່ນສານວັນທີ່ 17 ເດືອນສິບ (ຕຸລາ) 2005 (180 ມື້ຫລັງຈາກກົດໝາຍຖືກເຊັນ).

ຜູ້ຊ່ຽວຊານກົດໝາຍຄະດີລັມລະລາຍສ່ວນຫລາຍໄດ້ໃຫ້ຄວາມເຫັນວ່າກົດໝາຍໃໝ່ນີ້ເຂົ້າຂ້າງຝ່າຍເຈົ້າທີ່ຫລາຍທີ່ສຸດ ຂຽນບໍ່ດີ ແລະບໍ່ຮະອຽດ ການປ່ຽນແປງໃຫຍ່ໆທີ່ຄົນລາວສ່ວນຫລວງຫລາຍສົນໃຈຈະມີດັ່ງນີ້. ພາຍໃນ 180 ມື້ກ່ອນທີ່ຈະຍື່ນຄໍາຮ້ອງລັມລະລາຍຂຶ້ນສານລູກໜີ້ຜູ້ປະກາດລັມລະລາຍຕ້ອງໄດ້ໄປອົບຮົມ (Counseling) ຜ່ານອົງການ non-profit budget and credit counseling ທີ່ຖືກຮັບຮູ້ຈາກຮັກບານ ນອກຈາກວ່າໄອຍະການຮັກບານກາງໄດ້ບັນທຶກວ່າບໍ່ມີອົງການ counseling ຢູ່ໃນເຂດລູກໜີ້ນີ້. ການອົບຮົມຈະເລື່ອນໄປໄດ້ 30 ມື້ຫລັງຈາກມື້ທີ່ຍື່ນຄໍາຮ້ອງຂຶ້ນສານ (ຫລືຮອດ 45 ມື້ກຳສານຮັບຮູ້) ກຳສານເຫັນພ້ອມວ່າລູກໜີ້ມີເຫດຜົນດ່ວນພຽງພໍ ການຍົກເວັ້ນແລະລູກໜີ້ອໍ້ອົບຮົມ ແຕ່ບໍ່ມີຫ້ອງຮຽນພາຍໃນເວລາ 5 ມື້ ຫລັງຈາກການຮ້ອງຂໍ.

ກົດໝາຍລັມລະລາຍ (BAPCPA) ເລີ່ມຕັ້ງການລົງໂທດໃໝ່ ສໍາຫລັບລູກໜີ້ມາດຕາ 7 (Chapter 7) ທີ່ບໍ່ຍື່ນລາຍຮະອຽດທີ່ບັນຈຸໄວ້ໃຫ້ສານ. ກຳວ່າລູກໜີ້ບໍ່ຍື່ນລາຍຮະອຽດນີ້ພາຍໃນ 45 ມື້ຫລັງຈາກທີ່ຍື່ນຄໍາຮ້ອງ ສານອາດຈະຍົກເລີກຄໍາຮ້ອງມື້ທີ່ 46 (ບໍ່ໃຫ້ລັມລະລາຍ) ໂດຍອັດຕະໂນມັດ. ກຳລູກໜີ້ຮ້ອງຂໍພາຍໃນ 45 ມື້ຫລັງຈາກຍື່ນຄໍາຮ້ອງທາງສານອາດຈະເລື່ອນເວລາຂໍຕໍ່ໃຫ້ຕື່ມອີກ 45 ມື້ ກຳສານເຫັນວ່າມີເຫດຜົນ ກຳລູກໜີ້ຊຶ່ງເປັນບຸກຄົນໃນຄະດີມາດຕາ 7 ຫຼື 13 ບໍ່ເອົາໄປລາຍງານພາສີຮັກບານກາງ (federal tax return) ໃຫ້ເຈົ້າໜີ້ຕາມຄໍາຮ້ອງຂໍໃນເວລາດຽວກັນກັບລູກໜີ້ເອົາໃຫ້ຜູ້ກຳກັບຊັຟສິນ (trustee), ສານຈະທຳການຍົກເລີກຄໍາຮ້ອງຂໍລັມລະລາຍໂດຍອັດຕະໂນມັດນອກຈາກ

ວ່າລູກໜີ້ສະແດງໃຫ້ເຫັນວ່າລູກໜີ້ບໍ່ສາມາດຈະເຮັດໄດ້.

ນອກຈາກນີ້ແລ້ວກົດໝາຍໃໝ່ນີ້ຍັງ ມີຂໍ້ບັງຄັບຢ່າງໃໝ່ອີກສໍາຫລັບການຍົກເວັ້ນເຮືອນ (homeowner) exemption. ຜູ້ກຳກັບຊັຟສິນ (trustee) ອາດຈະຍົກເລີກການໂອນສິດທິໃນອາສັງຫາອະຣິມະຊັຟບາງແນວຊຶ່ງເກີດຂຶ້ນເຖິງ 10 ປີກ່ອນມື້ຍື່ນຄໍາຮ້ອງຂໍລັມລະລາຍ. ຂໍ້ປ່ຽນແປງທີ່ມີການໂຕ້ຖຽງກັນຫລາຍທີ່ສຸດຢ່າງ ນຶ່ງກໍຄືການກວດຄວາມສາມາດ "means testing" ໃນຄະດີມາດຕາ 7 ກ່ອນທີ່ຈະໄດ້ທຳ ການອະນຸຍາດໃຫ້ລັມລະລາຍໃນມາດຕາ 7 ນີ້. ກຳຮາຍໄດ້ບໍ່ຮິສຸດ "net income" ຂອງລູກໜີ້ ເກີນການຄຳນວນຕາມກົດໝາຍໃໝ່. ຄະດີລູກໜີ້ມາດຕາ 7 ຈະຖືກຍົກເຮີກໃນການະລະເມີດ ກົດໝາຍ "abuse" ຫລືກຳຫາກວ່າລູກໜີ້ຍອມຈະປ່ຽນເປັນຄະດີມາດຕາ (chapter) 11 ຫລື 13. ຜູ້ຊ່ອຍສານ (clerk) ກໍຈະບອກໃຫ້ເຈົ້າໜີ້ຮູ້ກຳຫາກວ່າມີການະລະເມີດກົດໝາຍຕາມນີ້.

ກຳຫາກວ່າຮາຍໄດ້ປະຈຳເດືອນ (12 ມື້ທີ່ຍື່ນຄໍາຮ້ອງ ຂຶ້ນສານ) ຂອງ ລູກໜີ້ ແລະ ຜົວເມັຽ ຄູນໃຫ້ເທົ່າກັບ ຫລືນ້ອຍກວ່າຮາຍໄດ້ສະເລັຽ ຄອບຄົວ "Medium Family Income" ໃນຮັກສານໄອຍະການຮັກບານກາງ (US trustee) ຜູ້ກຳກັບຊັຟສິນລັມລະລາຍ (bankruptcy trustee) ແລະຄົນອື່ນໆຈະບໍ່ມີສິດທິ (standing) ພ້ອມຮ້ອງໃຫ້ຍົກເລີກຄະດີໃນການະລະເມີດກົດໝາຍ (means test presumption of abuse). ກົດໝາຍ standing ນີ້ຊ່ອຍຜ່ອນກົດໝາຍ ກວດຄວາມສາມາດ means testing ໃຫ້ກາຍເປັນເບົາລົງໃນຮັກຊຶ່ງມີຮາຍໄດ້ສູງຄືຮັກຄາລິຟໍເນັຽ.

ຮາຍໄດ້ຄອບຄົວສະເລັຽ Medium Family Income ໃນຮັກຄາລິຟໍເນັຽມີດັ່ງນີ້ :

ຮາຍໄດ້ຄອບຄົວສະເລັຽຮັກຄາລິຟໍເນັຽ ຕາມຈຳນວນຄົນໃນຄອບຄົວ ໃນປີ 2004 ປ່ຽນຕາມເງິນເຟີ້

	ປະມານ	ຕ່ຳ	ສູງ
ຮ່ວມທັງໝົດ:	58,327	57,535	59,119
2-person families 2 ຄົນໃນຄົວ	53,506	52,502	54,510
3-person families 3 ຄົນໃນຄົວ	59,633	57,696	61,570
4-person families 4 ຄົນໃນຄົວ	68,310	66,511	70,109
5-person families 5 ຄົນໃນຄົວ	56,591	54,827	58,355
6-person families 6 ຄົນໃນຄົວ	56,929	53,974	59,884
7-or-more-person families (ຫລາຍກວ່າ 7 ຄົນໃນຄົວ)	58,395	54,536	62,254

ກົດໝາຍລັມລະລາຍໃໝ່ BAPCPA ນີ້ບັງຄັບໃຫ້ຝ່າຍລູກໜີ້ ແລະທະນາຍຄວາມຂອງລູກໜີ້ກວດເບິ່ງວ່າ ຮາຍລະອຽດໃນເອກະສາດທຸກຢ່າງທີ່ຍື່ນຂຶ້ນສານ

- 1) ມີເຫດຜົນຄວາມຈິງແລະ
- 2) ມີເຫດຜົນຕາມກົດໝາຍປັດຈຸບັນ ຫລືການໂຕ້ຖຽງທີ່ສົມຄວນເພື່ອຂໍເພີ່ມ ແກ້ໄຂ ຫລື ທຳການປ່ຽນແປງກົດໝາຍປັດຈຸບັນ;

ກຳຫາກວ່າທະແນະ (ທະນາຍປອມ) ປະກອບເອກະສາດຂໍຮ້ອງລັມລະລາຍທະແນະແລະລູກໜີ້ຈະໃຫ້ເຫດຜົນທາງກົດໝາຍໄດ້ຢ່າງໃດ ເພາະກົດໝາຍບັງຄັບບໍ່ໃຫ້ທະແນະແນະນຳທາງກົດໝາຍ?

ທະນາຍລູກໜີ້ມາດຕາ 7 ຕ້ອງຮັບປະກັນວ່າໄດ້ກວດເບິ່ງລາຍຮະອຽດໃນຄໍາຮ້ອງຂໍລັມລະລາຍແລ້ວບໍ່ເຫັນມີຂໍ້ຜິດ. ສະຫລຸບກັນຫຍັງແລ້ວ ກົດໝາຍລັມລະລາຍໃໝ່ນີ້ເຂົ້າໃຈຍາກຫລາຍແລະບັນຍັດທັງລູກໜີ້ ແລະທະນາຍຄວາມເພື່ອໃຫ້ມີຫລັກການຍັງຍື່ນຫລາຍຂຶ້ນກວ່າເດີມ.