



ALERT

For Clients and Friends of DREHER LANGER & TOMKIES L.L.P.
April 19, 2005

HIGHLIGHTS OF THE 2005 BANKRUPTCY REFORM ACT

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S.256 (the "Act"), passed the House on April 14, 2005 and was presented to President for signature on April 15, 2005. The President has said that he looks forward to signing the bill into law. In addition to extensive Bankruptcy Code reforms, the Act makes several amendments to federal Truth in Lending Act ("TILA") disclosure requirements. Some of the highlights of the Act include:

Bankruptcy Reform

- Means Testing – A debtor will no longer have the freedom to choose whether to file for Chapter 7 liquidation or Chapter 13 consumer reorganization. If a debtor's combined gross family income is greater than the state's median family income, the debtor may be required to file Chapter 13 and repay a portion of unsecured debt over a 36 to 60-month period;
- Credit Counseling – Except in limited circumstances, before filing for Bankruptcy protection, individuals must receive a certificate from an approved non-profit credit counseling agency providing that the individual has received a briefing outlining the opportunities for credit counseling and assistance in performing a related budget analysis;
- Elimination of Cram Down – Debtors will be precluded in Chapter 13 from reducing the amount of allowed secured claims to the value of the collateral if (i) the claim is for a purchase money security interest in a motor vehicle purchased within 910 days (approximately 2½ years) of the bankruptcy filing or (ii) any secured debt incurred within one year of the bankruptcy;
- Reaffirmations – As a condition for the effectiveness of a Reaffirmation Agreement, the debtor must receive extensive disclosures and the debtor must sign, prior to the filing of a reaffirmation, a statement disclosing the debtor's income, the debtor's actual current monthly expenses and the balance available to pay the reaffirmed debt;

- Redemptions – Redemption requires full payment of the allowed secured claim at the time of redemption;
- Valuation – Personal property acquired for personal, family or household purposes will be valued at replacement value, defined to mean the price a retail merchant would charge for property of that kind considering its age and condition;
- Elimination of the 4th Option – On secured claims, debtors will only have the three options of redeeming, reaffirming or surrendering property to a creditor and will no longer be able to "ride-through" by simply maintaining current payments; and
- Credit Card Debts and the Presumptive Period – The presumptive period for nondischargeability of credit card debts has been extended from 60 days to 90 days for luxury goods and from 60 days to 70 days for cash advances. Additionally, the minimum dollar thresholds have been reduced from \$1,225 to \$500 for luxury goods and from \$1,225 to \$750 for cash advances.

The majority of the above changes will become effective six months from the date of enactment.

Truth in Lending Act Amendments

- Minimum Payment Disclosures – New minimum payment warning disclosures will be applicable to an open-end credit plans upon which finance charges are accruing. Different periodic statement disclosure requirements will apply (i) if the required minimum monthly payment is more or less than 4%, (ii) to creditors regulated by the Federal Trade Commission and (iii) if the creditor maintains a toll-free telephone number for the purpose of providing specific repayment information;
- Disclosures for Credit Secured by a Dwelling – Additional credit advertisement and application disclosures will be required for credit extensions secured by a dwelling that exceed such dwelling's fair market value;
- Introductory Rate and Temporary APR Disclosures – Additional application or solicitation disclosures will be required for introductory rates and temporary annual percentage rates;
- Internet Solicitation Disclosures – Additional application or solicitation disclosures will be required for Internet-based credit card solicitations;
- Late Payment Disclosures – New periodic statement disclosures regarding late payment deadlines and penalties will be required;

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- Restriction on Terminating Accounts – Creditors will be prohibited from terminating open-end consumer credit accounts solely because finance charges have not been incurred on such accounts; and
- “Clear and Conspicuous” Regulations – The Federal Reserve Board will be required to promulgate regulations to provide guidance regarding the meaning of the term “clear and conspicuous” as used in the TILA.

The minimum payment disclosures will become effective the later of (i) 18 months after the date of enactment or (ii) 12 months after publication of implementing regulations. Most other TILA amendments will become effective the later of (i) 12 months after the date of enactment or (ii) 12 months after publication of implementing regulations. □

✧ *Mike Tomkies, Robin De Leo and Vanessa Nelson*