

# ASSET PROTECTION: DEAD OR ALIVE UNDER THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005?

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## History of the Act

The Bankruptcy Abuse Prevention and Consumer Protection Act was first introduced in 1995, during the 104th Congress, by Senator Herb Kohl (D – Wisconsin). It took ten years, seven legislative attempts, and a substantial lobbying effort by banks and credit card companies, but the 109th Congress finally passed The Bankruptcy Abuse Prevention and Consumer Protection Act (the “Act”) in 2005. The Act, which represented the most comprehensive reform of the Bankruptcy Code since its enactment in 1978, was signed into law by President Bush on April 20, 2005.

Both supporters and critics of the Act could agree upon the following principles: 1) bankruptcy laws are an important part of the “safety net of America”; 2) bankruptcy should be viewed only as a last resort in our legal system; and 3) people who have the ability to repay their debts should do so.<sup>1</sup> This, however, was the extent of their agreement. Supporters of the Act tended to emphasize the “dead beats” who abused the bankruptcy system, thereby making “honest”<sup>2</sup> Americans pay for the financial irresponsibility of others, while critics of the Act called it “mean-spirited” and “hard on the poor.”<sup>3</sup>

Prior to signing the bill into law, President Bush announced that “[i]n recent years, too many people have abused the bankruptcy laws. They’ve walked away from debts even when they had the ability to repay them.”<sup>4</sup> Upon the President’s signing of the bill, Senator Chuck Grassley (R – Iowa), who had introduced the Act to the 109th Congress, issued the following statement: “I’ve been working for years to make common sense reforms to the current bankruptcy system so that people who are responsible and pay their bills on time don’t have to subsidize the irresponsible actions of a few.”<sup>5</sup> Supporters of the Act agreed with President Bush and Senator Grassley that bankruptcy had become a system in which certain individuals could “get out of their debt scot-free while honest Americans who play by the rules have to foot the bill.”<sup>6</sup>

But as the ten-year period between the Act’s first introduction in Congress and its ultimate passage into law might suggest, the Act was not without its share of critics as well. Among them were 92 professors of bankruptcy and commercial law, who claimed in a jointly-written letter to Senators Arlen Specter (R – Pennsylvania) and Patrick Leahy (D – Vermont) that the Act was “deeply flawed” and would harm “small businesses, the elderly, and families with children.”<sup>7</sup> U.S. Bankruptcy Judge Frank Monroe, another critic of the Act, wrote in a recent opinion that “to call the Act a ‘consumer protection’ Act is the grossest of misnomers.”<sup>8</sup>

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As stated previously, this Act represented the most comprehensive reform of the Bankruptcy Code since its enactment in 1978. The intent of Congress in passing the Act was to “improve bankruptcy law and practice with a dominant theme of restoring personal responsibility and integrity in the bankruptcy system.”<sup>9</sup>

Most notable among the changes made to the existing Bankruptcy Code under the Act was the implementation of the “means test” for a debtor’s eligibility to receive a discharge under Chapter 7. Under this new requirement, the trustee or any creditor may bring a motion to dismiss a Chapter 7 bankruptcy case (under § 707(b)) if the debtor’s income is greater than the median income of the state in which the debtor is domiciled. Additional provisions of the Act further limit a debtor’s ability to file under Chapter 7. One such provision mandates that a debtor who receives a discharge under Chapter 7 must wait at least eight years (increased from six) before he or she is allowed to file under Chapter 7 again. Another such provision mandates that a debtor who receives a discharge under Chapter 7 must wait four years before he or she is allowed to file under Chapter 13. This provision is designed to limit so-called “Chapter 20” filings, whereby by a debtor first files under Chapter 7 to discharge unsecured debts and then files under Chapter 13 to address secured debts (such as a home mortgage). Another provision of the Act subjects attorneys to civil penalties if they certify abusive petitions, which is likely to have a “chilling effect” on Chapter 7 filings<sup>10</sup> because it “essentially requires attorneys to guarantee Chapter 7 means testing.”<sup>11</sup>

Other significant provisions of the Act expand the list of non-dischargeable debts, extend fraudulent transfer provisions, limit homestead exemptions under certain circumstances, exempt certain retirement plans from a debtor’s estate, and address fraudulent transfers to self-settled (*i.e.*, asset protection) trusts and other similar vehicles. The extent of these changes has caused a good bit of speculation regarding the viability of asset protection planning in the bankruptcy context. In an effort to clarify this speculation, this article will briefly summarize the relevant changes made by the Act and the consequential effect, if any, on asset protection planning.

### **Non-dischargeable Debts**

The Act expanded the list of non-dischargeable debts contained in Section 523 of the Bankruptcy Code to include educational loans made by nongovernmental and for-profit organizations to an individual, unless such debt would impose “undue hardship on the debtor and the debtor’s dependents.”<sup>12</sup> The Act also restricts a debtor’s ability to have debts on luxury goods and cash advances discharged. For instance, debt for luxury goods owed to a single creditor totaling more than \$500 (reduced from \$1225) and made within 90 days of filing (increased from 60 days) are not dischargeable. Likewise, cash advances on a single line of credit totaling more than \$750 (reduced from \$1225) and made within 70 days of filing (increased from 60 days) are not dischargeable. Finally, the definition of non-dischargeable debts that a debtor owes as a result of death or injury to another because the debtor was operating a motor vehicle while intoxicated is expanded to include the operation of a vessel or aircraft.

Although clearly more limiting, the expansion of the list of nondischargeable debts will generally only prevent last-minute purchases of personal effects that can be exempted as personal effects on credit that could be discharged. Accordingly, this change should not have a significant impact on asset protection planning.

### **Availability of Chapter 7 Discharge**

The Bankruptcy Code previously gave the court discretion to determine whether the debtor was entitled to a discharge under Chapter 7 or rather, was required to reorganize his debt in accordance with other provisions of the Bankruptcy Code. The Act significantly shifted this paradigm by adding a means test in place of the court's discretion. The most significant element of the means test is its income limitation, which causes debtors with an annual income above the median income for their state to be ineligible for a discharge under Chapter 7. The Census Bureau Median Family Income table for cases filed after February 13, 2006 is attached as Exhibit A.

The effect of the means test and its resultant limitation of discharge availability is that bankruptcy as a way to avoid judgments or other obligations will be available only to individuals who are earning very little, making its utility as an asset protection mechanism virtually nonexistent. If bankruptcy becomes the only option, individuals may be forced to choose between working for their creditors in a Chapter 13 reorganization or changing their income situation to bring their income below the means test threshold in order to obtain a discharge.

With regard to litigation, the threat of bankruptcy will no longer be a means of effecting a more reasonable settlement. This subtle shift in the balance between plaintiffs and defendants in our already overly litigious society may produce unforeseen, and possibly undesirable, economic consequences. Proponents of the Act assert that the Act's effect will be to lower interest rates,<sup>13</sup> and in the short term, that may be true. But the question is whether this short-term benefit is worth the long-term economic cost.

### **Exemptions**

**Federal vs. State Exemptions.** Section 522 of the Bankruptcy Code allows individual debtors to elect between exemptions provided by the Bankruptcy Code and those provided by the state of their domicile. Some states have completely opted out of the federal exemptions (like Florida), and others (like Texas) allow debtors to choose between federal or state exemptions. The Bankruptcy Code looks to state law to determine whether the debtor can choose between the exemption regimes. Often, but not always, state exemptions are more generous than those provided by the Bankruptcy Code, making bankruptcy outcomes partly dependent on state law.

**Domicile.** The determination of what state exemption law applies to the debtor is determined by the debtor's domicile. These rules are contained in Bankruptcy Code Section 522. Prior to the Act, the debtor's domicile was the place in which the debtor

was domiciled for the 180 days prior to the date the petition was filed.<sup>14</sup> In an effort to stave off attempts at exemption shopping, the Act extended the period to 730 days.<sup>15</sup>

If the debtor has not lived in the same place for 730 days before the petition was filed, then his domicile will be considered to be the place where the debtor lived for the 180 days before the 730 day period.<sup>16</sup> The Act then contains what the author believes is either a mistake or a very ill-conceived statutory change because it says that if the debtor did not live in the same place for the 180 day period prior to the 730 day period, then wherever the debtor lived “for a longer portion of such 180-day period than in any other place,” will be the debtor’s domicile.<sup>17</sup> This language was carried over from the earlier statute and made sense in that context because it meant that the debtor would be domiciled in the place he had lived the longest during the six-month (180 day) period before the filing of the bankruptcy petition.

Under the new provisions of the Act, however, this does not make sense because the consequence could be that the debtor, who, for example, was living in Arizona at the time the petition was filed and had moved to Arizona 20 months before the petition’s filing would not be considered to be an Arizona resident because he had not lived in Arizona for the entire 730-day (two-year) period prior to filing bankruptcy. Imagine that, prior to moving to Arizona, this debtor had been a college student residing in California but had spent a four-month summer internship with a TV station in New York. Given the fact that the Act says now that if the debtor has not lived in one place for the entire two years before filing bankruptcy, then domicile is determined in accordance with where the debtor lived for the six-month (180-day) period between 2½ years and 2 years before filing the petition, and if the debtor did not live in one place for that entire time, then domicile is determined by the place the debtor resided for the longest, not for the total of the 2½ years, but only for the 180 day period between 2½ years and 2 years before the petition’s filing. In our example, the debtor, who had been living in Arizona for a significant period of time, could be subject to the exemption laws of New York despite the fact that over the 2½ year period at issue he had only lived there for 4 months.

In advising clients, who tend to be much more mobile now than in the past, this provision will take on greater importance. If the legislature did indeed intend to penalize mobility in the bankruptcy context by forcing debtors into exemption regimes based on where they were domiciled 2½ years before the petition is filed, then planners must take this fact into account when advising clients with regard to the timing of their bankruptcy petition.

**Retirement Funds.** With regard to exemption of assets such as retirement plans in bankruptcy (especially individual retirement accounts (“IRAs”)), the interplay between state and federal law has not always produced consistent or clear results. In an attempt at clarity, the Act added provisions to Section 522 specifically exempting retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under Sections 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986 (the “IRC”) (*i.e.*, pension, profit-sharing and stock bonus plans, employee

annuities, individual retirement accounts [including Roth IRAs], deferred compensation plans of state and local government, tax-exempt organizations, and certain trusts). The exemption for funds in retirement accounts is found in both parts of Section 522; the part addressing debtors who opt into the federal exemption regime and the part addressing debtors who elect their state's regime. Further, the Act added provisions to the Bankruptcy Code exempting funds in a retirement account without such exemption being predicated on a finding that the funds are necessary for the support of the debtor and the debtor's dependents.<sup>18</sup>

With regard to the funds that are being distributed out of a retirement account during the bankruptcy period, it appears that Section 522(d)(10)(E) will apply to debtors who have opted into the federal exemption regime so that these funds will be exempt only if they are necessary for the support of the debtor and the debtor's dependents. Debtors who elect state exemptions will presumably look to their state's law to determine whether funds distributed from a retirement account will be protected.

The Act subjects IRAs to a \$1,000,000 cap on the debtor's aggregate interest in IRAs established under Sections 408 or 408A of the Internal Revenue Code other than a simplified employee pension account under Section 408(k) or a simple retirement account under Section 408(p) of the Internal Revenue Code (Section 522(n)). Amounts rolled over into an IRA, and earnings on the roll over amount, are in addition to the cap.

The Act clarified and finally put outstanding issues regarding individual retirement and other retirement plans to rest, and so retirement plans continue to be excellent asset protection mechanisms.

**Homestead.** As with the other exemptions, the Bankruptcy Code allows debtors domiciled in states that allow debtors to "opt in" to the federal exemption regime to choose between the federal exemption of \$15,000 in equity protected in the debtor's homestead or the debtor's state exemption. For debtors in many states (such as Illinois), the federal exemption is more generous than that offered by their state's exemption statutes. For other states, such as Florida and Texas, which have no value limitation on the homestead exemption, the state exemptions provide much more protection.

Perhaps in response to media reports of wealthy individuals plunking huge sums into large homes in anticipation of a judgment or bankruptcy, the Act added a provision that limits state law exemptions. It says that if the state law exemption regime is elected, "a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day [40 months] period preceding the date of the filing of the petition that exceeds in the aggregate \$125,000 in value" in the homestead.

There have been several cases interpreting this provision. The first case, *In re McNabb*,<sup>19</sup> found that the cap did not apply in states like Arizona and Florida that have opted out of the federal regime and do not allow its citizens to opt into the federal exemption regime. This result was loosely supported by the fact that Section 522(p)(1)

says that “as a result of electing under Subsection (b)(3)(A) to exempt property under State or local law,” and therefore, since the case involved a state in which the debtor could not “elect . . . to exempt property under State or local law,” this part of the statute didn’t apply.

Cases subsequent to *McNabb* involving opt-out states have determined that the legislative history is clear, even if the statute’s wording is not, and that the \$125,000 cap applies even to opt-out states.<sup>20</sup> It is fairly clear that the introductory clause at issue was included because the only time a cap would be necessary would be in situations in which the debtor’s homestead election is determined in accordance with state, rather than federal, exemption provisions.

Although the issue of application to states that have completely opted out of the federal exemption regime rather than allowing an election may be settled, the substantive issue remains as to what the statute means when it refers to “any amount of interest that was acquired” during the 1215-day period prior to filing for bankruptcy. Does it refer to homesteads that are acquired within this period (as the press reported in the days leading up to the passage of the legislation) or does it also apply to additional equity obtained during that time?

In the *Kaplan* case<sup>21</sup> in Florida, the bankruptcy judge found that the cap applied to additional equity acquired in the home during the 1215 days prior to filing bankruptcy. Unfortunately, the debtor agreed to settle the case before her attorney had an opportunity to argue his position that a debtor’s passive acquisition of equity in the homestead was not an “interest that was acquired” during the 1215-day period.

A recent Texas case, *In re Blair*,<sup>22</sup> held that for purposes of Section 522 of the Act, where the debtors’ equity in their homestead increased during the 1215 days prior to filing bankruptcy as a result of routine mortgage payments, the increased equity did not constitute an “interest” in a homestead “acquired” within the 1215 day period. The case did not discuss equity obtained as a result of market forces, but if the payment of mortgage payments that increased equity was permissible, it seems reasonable to assume that a passive increase in equity as a result of market forces would also be permissible.

It is clear that equity that was acquired prior to the 1215 day period and rolled into subsequent homes is protected by Section 522(p)(2)(B) as long as the previous and current residences are located in the same state. What remains at issue is whether equity acquired by the debtor in his or her homestead during the 1215 day period by virtue of market forces or routine mortgage payments are subject to the \$125,000 cap.

**Limitation on Homestead Exemption.** The Act added new Section 522(o) to the Bankruptcy Code which reduces the value of the homestead exemption by the value that is attributable to property converted by the debtor into homestead property within 10 years of the bankruptcy petition with the “intent to hinder, delay, or defraud a creditor” to the extent that such converted property was not otherwise exempt property.

Because other sections of the Act and the Bankruptcy Code refer to “actual intent”, the question is whether a different standard applies to fraudulent transfers in the homestead analysis. It is possible that since this provision uses the same language as Section 787(a)(2), courts may construe “intent” in the same manner.<sup>23</sup>

If that is the case, then a creditor should be required to prove that the conversion of the otherwise nonexempt property “was done with a specific intent on the part of the debtor to defraud a creditor, and this intent must involve actual rather than constructive intent.”<sup>24</sup>

A further question regarding this limitation on the homestead exemption is whether it applies in situations in which no creditor who was defrauded is a creditor of the debtor at the time the petition is filed. In other words, can the homestead exemption be generally cut back on proof of a fraudulent conversion, or only in situations where it is proved that the debtor actually intended to defraud a creditor and that creditor’s claims are outstanding after the bankruptcy is filed? The Bankruptcy Code defines “creditor” as an entity (a “person, estate, trust, governmental unit, and United States trustee”) that has a claim against the debtor or the debtor’s estate in Section 101(10)(B).<sup>25</sup> Therefore, the exemption should not be generally cut back. Rather, it should be cut back only in situations where not all of the defrauded creditors have been satisfied. “This interpretation is consistent with the apparent purpose of the provision, which is to protect the ability of defrauded creditors to recover on their claims.”<sup>26</sup>

### **Trustee Avoidance Powers**

Section 548 of the Bankruptcy Code defines a fraudulent transfer as a debtor’s transfer to a creditor with the “actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted.” The interesting point to note is that the federal fraudulent transfer standard of “actual intent . . . to defraud any entity to which the debtor was or became . . . indebted” is more restrictive than many state law statutes. This is due to the need to prove actual, rather than constructive, intent.

In addition to fraudulent transfers, Section 548 gives the trustee in bankruptcy the additional power to avoid transfers made within the prescribed period, whether or not fraudulent, if the debtor:

- (B) (i) received less than a reasonably equivalent value in exchange for such transfer or obligation; and*
- (ii)(I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;*
- (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;*

- (III) *intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or*
- (IV) *made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.*<sup>27</sup>

In addition to the applicable state law statute of limitations for fraudulent transfers, Bankruptcy Code Section 548 gave trustees in bankruptcy the ability to avoid transfers (either fraudulent or listed transfers) made within one year before the bankruptcy petition was filed. The Act extended this period to two years.

The Act added subpart IV specifically to allow trustees to avoid transfers to insiders without the necessity of proving the elements of fraudulent transfer.

**Self-settled trust or similar device.** As is so often the case with bills of this type, a last-minute amendment to the Act was introduced by Senator James Talent (R-Missouri) authorizing a trustee in bankruptcy to avoid any transfer of property by a debtor to a self-settled trust made within the ten years preceding the filing of the bankruptcy petition if the debtor is a beneficiary of the trust and the debtor made the transfer with the actual intent to hinder, delay, or defraud a creditor.

There was significant focus in legislative discussions about the perceived “loophole” that has developed for the affluent in states like Alaska and Delaware that have enacted asset protection legislation. While not discussed per se in the legislative debate, the problem with asset protection in states like Alaska is that it allows debtors in those states to opt out of the federal system, thereby receiving protection for the assets that they have transferred to a self-settled trust from creditors in bankruptcy. What was not discussed in the legislative debate, and therefore possibly not even taken into consideration, was the fact that in most cases the fraudulent transfer statutes of the states that have adopted asset protection statutes are no more restrictive (and in some cases, less restrictive) than the fraudulent transfer provisions contained in the Bankruptcy Code.

The final statute provides that “the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition if: (A) such transfer was made to a self-settled trust or similar device; (B) such transfer was by the debtor; (C) the debtor is a beneficiary of such trust or similar device; and (D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became on or after the date that such transfer was made, indebted.”<sup>28</sup>



There are several observations that can be made about this new provision.

1. **Acceptance of self-settled trusts.** The inclusion of this provision validates the use of self-settled trusts in certain situations.
2. **Ten-year look-back period.** The ten-year look-back period is an extremely long period of time. That means that when advising clients, it is more important than ever to advise them to put asset protective vehicles in place very early on in their lives and careers.
3. **Self-settled trust or similar device.** The addition of the words “or similar device” leaves open the possibility that transfers to other estate planning-type vehicles like limited partnerships, grantor retained annuity or income trusts, charitable remainder trusts, qualified personal residence trusts, etc. are also subject to avoidance under this provision, a result that could be disastrous from a transfer tax standpoint.
4. **Transfer by the debtor.** The requirement that a transfer be made by the debtor leaves open the possibility that the structure could be funded with a loan from the grantor rather than by a direct transfer of funds or property to the structure or by a modest transfer by a family member (such as a parent with the proceeds invested perhaps alongside the debtor in a business venture so that the attributable value is protected).
5. **Transfer must be made with actual intent to defraud present or future creditors.** The standard contained in this provision is the same as the general fraudulent transfer provisions contained elsewhere in the Bankruptcy Code. Therefore, it is not specifically tailored to, or targeted at, asset protection trusts. However, the creditor must prove “actual intent” to defraud a creditor who has a claim against the debtor at the time of the bankruptcy.<sup>29</sup> This means that if a person with a claim against the debtor in the bankruptcy cannot prove actual intent in his case but can prove it with regard to another creditor whose debt was satisfied prior to bankruptcy, then the transfer should not be capable of being set aside. This result is more protective than what would occur in many states in which transfers will be set aside if it can be proved that there was actual intent to defraud any creditor.

The transfer could nonetheless also be avoided under the general provisions of Section 518(a)(1)(B) whether or not fraudulent, emphasizing the need for planning attorneys to do a solvency analysis each time a transfer is made from a client to a protected vehicle because one never knows what can happen in a ten-year period of time.

6. **Offshore Asset Protection Trusts.** There has been speculation that this new provision applies only to domestic, and not to foreign, asset protective vehicles, and certainly the legislative history supports that conclusion. However, the

language of the statute is certainly broad enough to encompass foreign trust structures, and even though the trust itself may not be subject to the jurisdiction of the bankruptcy court, the debtor certainly is subject to not obtaining a discharge if assets have been transferred improperly. The problem with the offshore trust from the bankruptcy trustee's standpoint is that if the assets are not physically located in the U.S., then it will be difficult to access them for purposes of satisfying creditors' claims.

## Conclusion

Despite the sweeping changes contained in the Act and the difficulties presented by some of the language, asset protection, while not as robust and healthy as before, is not dead yet.

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<sup>1</sup> President's Remarks on Signing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, *Weekly Comp. Pres. Doc., Volume 41, Number 16*, pp. 641-2 (April 20, 2005).

<sup>2</sup> Letter from Richard L. Aaron, Professor of Law, S.J. Quinney College of Law, University of Utah, et al. to Senators Arlen Specter and Patrick Leahy (February 16, 2005), a copy of which is attached as Exhibit B.

<sup>3</sup> Richard Posner, *The Becker-Posner Blog: The Bankruptcy Reform Act* (March 27, 2005) <[http://www.becker-posner-blog.com/archives/2005/3/the\\_bankruptcy.html](http://www.becker-posner-blog.com/archives/2005/3/the_bankruptcy.html)>.

<sup>4</sup> See *supra* note 1.

<sup>5</sup> *Grassley Praises President For Signing Comprehensive Bankruptcy Reform Legislation* (April 20, 2005) <[http://grassley.senate.gov/index.cfm?FuseAction=PressReleases.View&PressRelease\\_id=4897](http://grassley.senate.gov/index.cfm?FuseAction=PressReleases.View&PressRelease_id=4897)>.

<sup>6</sup> See *supra* note 2.

<sup>7</sup> See *id.*

<sup>8</sup> *In re Sosa*, Case No. 05-20097-FM (Bankr. W.D. Tex. 2005), a copy of which is attached as Exhibit C.

<sup>9</sup> CCH Bankruptcy Reform Act Briefing: Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, p. 1 (April 21, 2005) <[http://www.cch.com/bankruptcy/Bankruptcy\\_04-21.pdf](http://www.cch.com/bankruptcy/Bankruptcy_04-21.pdf)>.

<sup>10</sup> See *id.*

<sup>11</sup> See *id.* p.3.

<sup>12</sup> Bankruptcy Code Section 523(a)(8).

<sup>13</sup> See *supra* note 3.

<sup>14</sup> Previous Bankruptcy Code Section 522(b)(2)(A).

<sup>15</sup> Bankruptcy Code Section 522(b)(3)(A).

<sup>16</sup> See *id.*

<sup>17</sup> See *id.*

<sup>18</sup> Bankruptcy Code Sections 522 (b)(3)(C) and 522 (d)(12)

<sup>19</sup> *In re McNabb*, 326 B.R. 785 (Bankr. D. Ariz. 2005).

<sup>20</sup> See *In re Wayrynen*, Case No. 05-32144-BKC-SHF (2005), in which the court determined that even though the statute applied to opt-out states that the Section 522(p)(2)(B) safe harbor for equity rolled over to the present home from previous residences in the same state includes not only the home acquired most recently but also the homes acquired outside of the 1215 day period, *In re Virissimo*, Case No. BK-S-13605-LBR (2005), and *In re Heisel*, Case No. BK-S-05-15667-LBR (2005).

<sup>21</sup> *In re Kaplan*, Case No. 05-14491-BKC-RAM (2005).

<sup>22</sup> *In re Blair*, Case No. 05-35922-HDH-7 (2005).

<sup>23</sup> John Rao, National Consumer Law Center Inc., Exemptions Under 2005 Bankruptcy Act (2005), p.5.

<sup>24</sup> See *id.* p. 5.

<sup>25</sup> Bankruptcy Code Section 101(15).

<sup>26</sup> See *supra* note 23, p. 6.

<sup>27</sup> Bankruptcy Code Section 548(a)(1)(B).

<sup>28</sup> Bankruptcy Code Section 548(e)(1).

<sup>29</sup> Bankruptcy Code Section 101(10)(B).