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October 28, 2010

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Re: Proposed Technical Amendments to the Bankruptcy Code Regarding BAPCPA

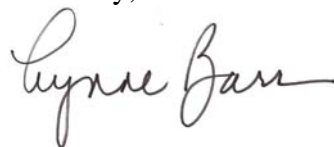
Gentlemen:

The American Bar Association Section of Business Law (the "Section") is pleased to submit the enclosed comments to the Senate and House Judiciary Committees regarding proposed technical amendments to the Bankruptcy Code to correct certain errors contained in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Although we understand that the House recently passed a more limited bankruptcy technical corrections bill, H.R. 6198, in late September, we encourage you to consider including the additional technical corrections outlined in the enclosed comments in the final version of any legislation that Congress may decide to enact in this area.

Please note that the views expressed in these comments are being presented only on behalf of the Section. They have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and should not be construed as representing the policy of the American Bar Association

If you have any questions after reviewing these comments and proposed technical amendments, please let us know. Thank you for your consideration.

Sincerely,



Lynne B. Barr  
Chair, ABA Section of Business Law

Enclosure

October 28, 2010

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cc: The Honorable Sheldon Whitehouse (w/enclosure)  
The Honorable Charles E. Grassley (w/enclosure)  
The Honorable Steve Cohen (w/enclosure)  
The Honorable Trent Franks (w/enclosure)

## **EXECUTIVE SUMMARY**

### **ABA BUSINESS LAW SECTION PROPOSED TECHNICAL AMENDMENTS TO BAPCPA**

**October 2010**

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) which amended the Bankruptcy Code contained a number of errors. Despite the passage of 5 years, Congress has not yet passed a technical corrections bill. The errors bedevil bankruptcy judges and practitioners and add unnecessary costs and uncertainty to the bankruptcy process. The American Bar Association Business Law Section, through its Bankruptcy Law Technical Corrections Task Force, has prepared the following technical amendments in the hope that Congress will begin the process of correcting the errors in BAPCPA.

The views expressed herein are presented on behalf of the ABA Business Law Section. They have not been approved by the House of Delegates or Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the position of the Association.

The proposed technical corrections are summarized in the following chart, with the full text of the proposed technical amendments appearing immediately thereafter. The proposed amendments primarily correct cross-references, numbering, and typographical errors in BAPCPA and also clarify various definitions in the statute.

#### **Executive Summary of Proposed Technical Amendments to BAPCPA**

<b>Section</b>	<b>Description</b>	<b>Analysis</b>
<b>§ 101(4A)</b>	Add after "provided": "(except by a creditor)"	Excludes creditors from definition of "bankruptcy assistance": Congress did not intend to subject creditors to the rules governing bankruptcy assistance
<b>§ 101(13)</b>	Add after "residential structure": "used by the debtor as the debtor's principal residence"	If read literally, § 101(13A) refers only to a type of building or structure that is a residence, but imposes no requirement that the debtor use the structure as the debtor's own primary residence. Under the current definition, a residential structure that the debtor owns and rents to others or uses only for vacation could be deemed the debtor's principal residence. This has implications for, among other areas of bankruptcy law, the homestead exemption and venue. The proposed amendment would include a requirement that the debtor use the structure as the debtor's principal

		residence for it to be considered the “debtor’s principal residence.”
<b>§ 101(27A)(A)(i)</b>	Delete “and” at end of subparagraph	An entity offering services described in either line (i) or (ii) should qualify as a “health care business”
<b>§ 101(27A)(A)(ii)</b>	Delete “and” at end of subparagraph	The relationship between subsections (A) and (B) is easier to understand without this word: (A) is the definition and (B) provides examples
<b>§ 101(40A)</b>	Add “health care” before “services”	A health care business may provide services of many kinds (e.g., food, gift store), but a “patient” should only be someone who receives health care services
<b>§ 101(40B)</b>	Move “relating to a patient” to the end of the paragraph	Removes ambiguity in the effect of the term “or” in the paragraph
<b>§ 101(35)</b>	Change “23” to “21B” and “35” to “33A”	BAPCPA incorrectly inserted (23) and (35) into § 101(35)(B) replacing (21B) and (33)(A), respectively.
<b>§ 101(51D)</b>	Add subparagraph (C) (and change reference in subparagraph (A) to include (C): “excludes an individual unless the individual is primarily engaged in commercial or business activities.”	Effectuates uncodified BAPCPA provision to exclude individuals who are not primarily engaged in commercial or business activities
<b>§ 103(a)</b>	Add: “The court may order that additional provisions of chapters 1, 3 and 5 apply in a chapter 15 case.”	Clarifies ambiguity in statute – many other provisions in chapters 1, 3 and 5 should apply to many chapter 15 cases
<b>§ 109(h)(1)</b>	Delete “date of”	Authorizes credit counseling on the same date as the filing of the bankruptcy petition
<b>§ 110(a)(1)</b>	Add after “filing”: “and includes a person who operates a website that prepares bankruptcy petitions or schedules”	Implements Frankfort Digital Servs. v. Neary (In re Reynoso), 315 B.R. 544 (B.A.P. 9 <sup>th</sup> Cir. 2004)
<b>§ 110(c)(2)(A)</b>	Insert “last four digits of” before “the Social Security account number”	Protects bankruptcy petition preparers from identity theft resulting from use of their social security numbers
<b>§ 303(l)</b>	Redesignate as 303(k)	303(k) was deleted by BAPCPA, leaving a hole before 303(l)

<b>§ 308(b)(4)(B)</b>	Change (A)(1) to (b)(4)(A)(1)	Clarifies reference
<b>§ 308(b)(4)(C)</b>	Redesignate as 308(b)(5)	Clarifies reading of statute
<b>§ 330(a)(1)</b>	Add “the debtor’s attorney” after “trustee”	Corrects scrivener’s error in 1994 legislation deleting this phrase
<b>§ 330(a)(1)</b>	Add “a foreign representative” after “trustee”	Clarifies court authority to award fees to a foreign representative in a chapter 15 case
<b>§ 331</b>	After “a debtor’s attorney,” add “consumer privacy ombudsman, patient care ombudsman”	Clarifies that a consumer privacy ombudsman and a patient care ombudsman qualifies for a court award of interim compensation
<b>§ 342(b)(1)(A)</b>	Replace “costs” with “filing fees”	The clerk has specific information on filing fees, but lacks specific information on the other costs of a bankruptcy case
<b>§ 342(d)</b>	Delete	§ 704(b)(1)(A) and § 342(d) deal with precisely the same subject matter. They are obviously in conflict and not amenable to reconciliation. § 342(d) should be stricken in its entirety because, unlike § 704(b)(1)(A), it has no mechanism for determining whether the presumption of abuse has arisen. Furthermore, the United States trustee is much better suited to making this determination than is the clerk of the bankruptcy court.
<b>§ 362(c)(3)(B)</b>	Add after motion: “made within 30 days after the filing of the later case”. Delete “before the expiration of the 30-day period”	Completing the hearing within 30 days (to extend the stay after the dismissal of a prior case) is a burden on the court and a potential trap for the debtor. Prompt disposition of the motion by the court is sufficient.
<b>§ 362(c)(4)(A)</b>	Insert after “refiled under”: “a chapter other than chapter 7 after dismissal under”	Makes sense of poorly drafted provision: a case cannot be filed (or refiled) under § 707(b)
<b>§ 362(d)(4)</b>	Designate last paragraph as § 362(p) (with appropriate reference to § 362(d)(4)	Gives hanging paragraph a proper designation
<b>§ 362(i)</b>	Change “shall not be presumed to be filed not in good faith” to “shall be presumed to be filed in good faith”	Eliminates confusing double negative
<b>§ 362(l)(3)(B)(ii)</b>	Change “serve on the lessor a certified	Sections 362(l) and (m) prescribe the

<p><b>§ 362(l)(4)(B)</b></p> <p><b>§ 362(m)(2)(D)(ii)</b></p>	<p>copy” to “give notice to the lessor and the debtor of entry”</p> <p>Change “serve upon the lessor and the debtor a certified” to “send to the lessor and the debtor”</p> <p>Change “serve upon the lessor and the debtor a certified copy” to “give notice of entry to the lessor”</p>	<p>procedures to be followed to prevent a debtor's eviction from leased premises under particular circumstances, and require the court clerk to “serve a certified copy” of either the court's docket or a particular order on the landlord and the debtor. First, courts do not typically “serve” notice in the manner of parties under the Federal Rules of Civil Procedure, but are generally required to simply send notice of an event or of the entry of an order. In the instance where the clerk is required to “serve” a notice, the Federal Rules expressly mandate the manner of service. See e.g. Fed. R. Bankr. P. 9022(a), which provides that “[I]mmediately on the entry of a judgment or order the clerk shall serve a notice of the entry in the manner provided in Rule 5(b) Fed. R. Civ. P. on the contesting parties and on other entities as the court directs . . .”</p> <p>Secondly, issues exist with the requirement that the clerk of the court send a <i>certified</i> copy of the court's order or a <i>certified</i> copy of the docket upon the lessor and the debtor. Under item (2) of the Bankruptcy Court Miscellaneous Fee Schedule, promulgated by the Judicial Conference of the United States, the clerk must charge a \$9.00 fee by operation of statute. Further, the statute does not provide a mechanism for collection of this mandatory fee.</p> <p>This revision achieves the intention of the statute by providing adequate notice to the parties, but removes the unintended burden on the parties and the clerk's office.</p>
<p><b>§ 363(d)</b></p>	<p>Replace this subsection with the following:</p> <p>(d) (1) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent consistent with any relief granted under subsection (b), (d), (e) or (f) of § 362.</p> <p>(2) For a corporate debtor that is not a moneyed, business or commercial corporation, the trustee may use, sell, or lease property under subsection (b) or (c) of this section only in accordance with applicable non-bankruptcy law that governs the</p>	<p>Read literally, § 363(d)(1), as amended by BAPCPA, requires that all sales or property (including sales by a for-profit business debtor) comply with state law that governs the transfer of property by a nonprofit corporation or trust. This is an unintended drafting error.</p> <p>Further references to nonprofit trusts should be deleted from this section because it is fundamental bankruptcy law that a nonprofit trust may never be a bankruptcy debtor. Thus, a bankruptcy case trustee would not administer a case of a nonprofit trust nor have access to the</p>

	transfer of property by such a corporation.	assets of a “debtor” nonprofit trust.  Therefore, this revision would provide that the requirement to comply with state law that governs the transfer of property by a nonprofit corporation only applies to nonprofit corporations, and would remove the erroneous reference to nonprofit trusts.
<b>§ 365(b)(1)(A)</b>	Delete all of the language added in 2005 (following “such default”). Add subsection 365(b)(2)(E): “nonmonetary obligations if it is impossible for the trustee to cure such breach by performing nonmonetary acts at and after the time of assumption, except that if such breach arises from a failure to operate in accordance with a non-residential real property lease, then such default shall be cured by performance at and after the time of assumption and pecuniary losses resulting from such breach shall be compensated in accordance with the provisions of paragraph (1).”	365(e)(2) is the proper location for exceptions to 365(e)(1). In addition, this language is clearer.
<b>§ 365(d)(4)(B)(i)</b>	Change “lessor” to “lessee”	Corrects a drafting error: the debtor referred to in this provision is a lessee, not a lessor.
<b>§ 366(b)</b>	Delete this subsection altogether	Subsection (c) was drafted to replace subsection (b) altogether.
<b>§ 366(c)(2)</b>	Change “date of the filing of the petition” to “date of the order for relief”	As enacted, this provision applies to an involuntary petition, where the merits of the petition may be in dispute, as well as to voluntary petitions. For such petitions, this provision is inconsistent with other provisions in the bankruptcy code, such as § 507(a)(3) (giving a third level priority to postpetition unsecured claims arising in the ordinary course of business before the order of relief or appointment of a trustee).
<b>§ 366(c)(2)</b>	Change “is satisfactory to the utility” to “meets the requirements of paragraph (1).”	The present language makes all but the last subpart of § 366(c)(i)(A) superfluous. This change permits that language to have effect.
<b>§ 507(a)(8)</b>	Designate last paragraph as § 507(e) (with appropriate reference to § 507(a)(8))	Gives hanging paragraph a proper designation.

<b>§ 507(a)(8)(A)</b>	Remove period and insert “or” at end of subparagraph (ii)	Subparagraphs (i), (ii) and (iii) were previously in the disjunctive. The “or” was inadvertently deleted, making them conjunctive.
<b>§ 507(a)(10)</b>	Change “or vessel” to “vessel or aircraft”	Makes this section parallel (as it was previously) to the treatment of conduct resulting from drunkenness in § 523(a)(9).
<b>§ 521(a)(1)(v)</b>	Change “monthly net income” to “monthly income and expenses”	Coordinates statutory language with Schedules I and J, which provide sufficient information to the trustee and creditors.
<b>§ 521(a)(3)</b>	Add “is” after “auditor”; change “serving under” to “performing an audit of the case pursuant to”; change “trustee” to “trustee or auditor”	Corrects grammatical mistakes.
<b>§ 521(a)(4)</b>	Same change as in 521(a)(3)	Corrects grammatical mistakes.
<b>§ 521(a)(6)</b>	Designate last paragraph as § 521(k) (with appropriate reference to § 521(a)(6)	Gives this hanging paragraph a proper designation.
<b>§ 521(f)</b>	Change “file with the court” to “file with the trustee”	The court has no need for a debtor’s income tax returns, and protecting their confidentiality is difficult and inconsistent with CM-ECF. The trustee should be the custodian of such documents because the trustee is not subject to the court’s obligations to make files available to the public.
<b>§ 521(h)</b>	Add “the court” before “the United States trustee”	Authorizes the court to verify identification of a debtor to prevent fraudulent filings.
<b>§ 521(i)(1)</b>	Change (2) to (3)	Corrects reference to 521(i)(3).
<b>§ 521(i)(1)</b>	Delete “automatically”	Due process prevents the dismissal of a case without notice; in addition, no such dismissal is available under CM/ECF, the national clerk’s office computer program.
<b>§ 521(i)(2)</b>	Change “5” to “14”	Due process requires effective notice before dismissal of a case – 5 days is insufficient to give effective notice.
<b>§ 522(b)(3)(C)</b>	Designate last paragraph as § 522(r) (with appropriate reference to § 522(b)(3)	Gives hanging paragraph a proper designation.

<b>§ 522(f)(1)(B)</b>	Delete “wearing apparel, appliances” and “jewelry”	This language is superfluous: § 522(f)(4) defines “household goods” to include these categories, except that it disqualifies any jewelry (excluding wedding rings) with a fair market value exceeding \$500.
<b>§ 522(p)(1)</b>	Delete all of the language before “a debtor”; add “under state or local law” after “may not exempt”	Makes \$125,000 homestead exemption applicable nationwide; reverses outcome in <i>In re McNabb</i> , 326 B.R. 785 (Bankr. D. Ariz. 2005).
<b>§ 523(a)(18)</b>	Designate last paragraph as § 523(f) (with appropriate reference to § 523(a)(18))	Gives hanging paragraph a proper designation.
<b>§ 523(a)(19)</b>	Designate last paragraph as § 523(g) (with appropriate reference to § 523(a)(19))	Gives hanging paragraph a proper designation.
<b>§ 526(a)(4)</b>	Add “and discharging such debt” after “under this title”	Would permit an attorney to advise a client to obtain appropriate refinancing of existing debt (such as at a lower interest rate) or borrowing money, provided that the debtor does not contemplate discharging the debt in bankruptcy. This change adopts the narrow construction given in <i>Hersh v. United States</i> , 2008 WL 5255905 (5 <sup>th</sup> Cir. 2008), and avoids the unconstitutionality of the provision found in <i>Milavetz, Gallop &amp; Milivetz v. United States</i> , 541 F.3d 785 (8 <sup>th</sup> Cir. 2008).
<b>§ 528(c)</b>	Add: “This section does not apply if a debt relief agency provides bankruptcy assistance services to an assisted person who does not file a bankruptcy case within 180 days thereafter.”	Avoids possible interpretation of § 528 that makes it applicable to a debt relief agency giving advice to an assisted person who does not file a bankruptcy case.
<b>§ 704(b)(1)(A)</b>	Replace “date of the first meeting” with “the conclusion of the meeting”	There is no “first meeting of creditors”: this was abolished in 1984. This change would give the U.S. Trustee 10 days from the conclusion of the meeting of creditors to file the required statement, and would not require the filing until the Trustee has obtained all available information from the debtor.
<b>§ 707(a)(3)</b>	Change “paragraph (1) of section 521” to “paragraph (a)(1) of section 521”	BAPCPA redesignated § 521(1) as § 521(a)(1) – this change corrects the reference.
<b>§ 707(b)(3)</b>	Change “subparagraph (A)(i) of such	This reference is to the presumption under

	paragraph” to “subparagraph (A)(i) of paragraph (2)	the means test, which is contained in paragraph (2), not paragraph (1)
<b>§ 707(b)(5)(A)(ii)</b>	Delete subclause (II)	Subclause (II) of § 707(b)(5)(A)(ii) is so riddled with error that the proper remedy is to strike it in its entirety. Its most obvious problem is the cross reference to § 707(b)(4)(C)(i) and (ii), with which it is impossible for a creditor's attorney to comply because clause (ii) requires a consumer debtor's attorney to certify that the debtor's petition is not an abuse. Section 707(b)(5)(A)(ii)(II) also creates different standards for the creditor and its attorney in the same case and with respect to the same motion to dismiss, with the greater possibility for sanctions falling on the client rather than the attorney. Thus, if a creditor's attorney files a motion to dismiss a debtor's chapter 7 case and that motion violates Rule 9011 but does not “coerce the debtor into waiving a right guaranteed” under the code, the creditor can be sanctioned, but by the statute's plain language, the attorney cannot, even if the attorney is equally, if not more, culpable.
<b>§ 707(c)</b>	Add: “(c) a presumption of abuse under this section is rebutted if the court finds that the interests of creditors would be better served by a chapter 7 case.”	Creditors may be better off with a chapter 7 case, if the estate has assets that can be liquidated and distributed to creditors. Creditors usually prefer to be paid earlier than they might be paid under a chapter 13 plan, especially since the plan may not be successful.
<b>§ 1104</b>	Delete “or examiner” from § 1104(a)(3) and add a new (c)(3): “grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of an examiner is in the best interests of creditors and the estate.”	Consolidates the examiner provisions in § 1104(c) and eliminates non-parallel language in § 1104(a)(3).
<b>§ 1112(b)(1)</b>	Restore “or the United States trustee or bankruptcy administrator”	Restores the power of a U.S. trustee to move for dismissal or conversion of a chapter 11 case. This deletion in 2005 appears to be inadvertent.
<b>§ 1112(b)(2)</b>	Delete: “absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the	Redundant – duplicates language in § 1112(b)(1).

	estate”	
<b>§ 1115(c)</b>	Add subsection: “(c) an individual who has filed a petition under this chapter may use property of the estate for reasonable living expenses”	Eliminates need for a court order, added in 2005, to permit a chapter 11 debtor to pay living expenses. Alternatively, a provision may be added that excludes from the chapter 11 estate such funds used for living expenses during the chapter 11 case.
<b>§ 1125(f)(3)</b>	Delete from paragraph (A): “the court may conditionally approve a disclosure statement” and substitute: “after determining under subparagraph (1) that a plan provides adequate information, the court may conditionally approve the plan”. In paragraph (B), substitute “plan” for “disclosure statement” Substitute for paragraph (C): the court may hold a single hearing for confirmation of the plan and approval of the adequacy of the information therein.”	Clarifies the procedure when the court finds that a separate disclosure statement is not needed in a small business case and deletes subsequent reference to such an omitted disclosure statement.
<b>§ 1127(f)(1)</b>	Change “(a)” to “(e)”	The amendments to § 1127 relate only to the modification of a confirmed plan where the debtor is an individual – this change corrects an erroneous reference to the modification provision.
<b>§ 1129(a)</b>	Add new subparagraph 1129(a)(16): “All requested tax documents have been provided to the court.”	Codifies BAPCPA § 1228(b), which has not been codified.
<b>§ 1141(d)(5)(C)</b>	Change “unless” to: “the court shall deny a discharge if,”; delete “no”	Clarifies language of circumstances where a discharge must be denied for an individual debtor to whom § 522(q)(1) applies.
<b>§ 1307(c)(9)</b>	Change “paragraph (1) of section 521” to “paragraph (a)(1) of section 521”	BAPCPA redesignated § 521(1) as § 521(a)(1) – this change corrects the reference.
<b>§ 1307(c)(10)</b>	Change “paragraph (1) of section 521” to “paragraph (a)(1) of section 521”	BAPCPA redesignated § 521(1) as § 521(a)(1) – this change corrects the reference.
<b>§ 1325(a)(9)</b>	Designate second sentence as § 1325(c) (with appropriate reference to § 1325(a)(9))	Gives hanging paragraph a proper designation.
<b>§ 1325(a)(10)</b>	Add new provision: “all requested tax	Codifies BAPCPA § 1228(b), which is

	documents have been filed with the court.”	uncodified.
<b>§ 1325(b)(1)(B)</b>	Delete “to unsecured creditors”	Plan payments are distributed to a variety of creditors under a chapter 13 plan, including secured creditors and the chapter 13 trustee. This provision appears to require that all payments go to unsecured creditors only. No reference is made to it in the legislative history, and it appears to be a mistake.
<b>§ 1501(c)(2)</b>	Replace “who have debts within the limits of § 109(e)” with “who are eligible under § 109(e) to file a chapter 13 case”	The purpose of this provision was to exclude those who should file under chapter 13, but not to exclude those who are ineligible because of other restrictions on chapter 13. The proposed language clarifies this result.
<b>§ 1517(a)(2)</b>	Add “within the meaning of § 101(24)”	Restores language parallel that in the Model Law on which chapter 15 is based (“body” has no particular meaning without reference to the definition of “foreign representative” in § 101(24), which also derives from the Model Law)
<b>§ 1520(a)(2)</b>	Change “552” to “542”	The intention was to require the turnover of property, as provided by § 542, to the foreign representative upon the recognition of a foreign main proceeding. See Legislative History, at 115 (which contains this same typographical error in one of its two references to § 542)
<b>28 USC § 158(a)(3)</b>	Delete “and with leave of court, from interlocutory orders and decrees”	Eliminates duplicative language.

**TEXT AND ANALYSIS OF PROPOSED TECHNICAL AMENDMENTS TO  
BAPCPA**

**PROPOSAL:** Amend § 101(4A) of the Bankruptcy Code to include the following language after “provided”: “except by a creditor”

**Amends § 101(4)(A) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (4A) The term “bankruptcy assistance” means any goods or services sold or  
3 otherwise provided except by a creditor to an assisted person with the express or  
4 implied purpose of providing information, advice, counsel, document preparation,  
5 or filing, or attendance at a creditors' meeting or appearing in a case or  
6 proceeding on behalf of another or providing legal representation with respect to  
7 a case or proceeding under this title.

**(Legislative Draft - - Additions underlined; deletions struck through)**

§ 101. **Definitions**

(4A) The term “bankruptcy assistance” means any goods or services sold or otherwise provided except by a creditor to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title.

**ANALYSIS:** The additional language would exclude creditors from the definition of “bankruptcy assistance.” Congress did not intend to subject creditors to the rules governing bankruptcy assistance.

**PROPOSAL:** Amend § 101(13A) of the Bankruptcy Code to include the following language after “residential structure”: “used by the debtor as the debtor’s principal residence”

**Amend § 101(13A) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (13A) The term “debtor’s principle residence” –

3 (A) means a residential structure used by the debtor as the debtor’s principal  
4 residence, including incidental property, without regard to whether that structure  
5 is attached to real property; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**

(13A) The term “debtor’s principle residence” –

(A) means a residential structure used by the debtor as the debtor’s principal residence, including incidental property, without regard to whether that structure is attached to real property; and

**ANALYSIS:** If read literally, § 101(13A) refers only to a type of building or structure that is a residence, but imposes no requirement that the debtor use the structure as the debtor’s own primary residence. Under the current definition, a residential structure that the debtor owns and rents to others or uses only for vacation could be deemed the debtor’s principle residence. This has implications for, among other areas of bankruptcy law, the homestead exemption and venue. The proposed amendment would include a requirement that the debtor use the structure as the debtor’s principal residence for it to be considered the “debtor’s principal residence.”

**PROPOSAL:** Amend § 101(27A) of the Bankruptcy Code to delete the following language at the end of the subparagraphs (i) and (ii): “and”

**Amend § 101(27)(A) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (27A) The term "health care business"—

3 (A) means any public or private entity (without regard to whether that entity is  
4 organized for profit or not for profit) that is primarily engaged in offering to the  
5 general public facilities and services for—

6 (i) the diagnosis or treatment of injury, deformity, or disease;

7 (ii) surgical, drug treatment, psychiatric, or obstetric care;

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**

(27A) The term "health care business"—

(A) means any public or private entity (without regard to whether that entity is  
organized for profit or not for profit) that is primarily engaged in offering to the  
general public facilities and services for—

(i) the diagnosis or treatment of injury, deformity, or disease; ~~and~~

(ii) surgical, drug treatment, psychiatric, or obstetric care; ~~and~~

**ANALYSIS:** An entity offering services described in either line (i) or (ii) should  
qualify as a “health care business.”

**PROPOSAL:** Amend § 101(40A) of the Bankruptcy Code to include the following language before “services”: “health care”

**Amend § 101(40A) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (40A) The term “patient records” means any individual who obtains or receives  
3 health care services from a health care business.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**

(40A) The term “patient records” means any individual who obtains or receives  
health care services from a health care business.

**ANALYSIS:** A health care business may provide services of many kinds (e.g., food, gift store), but a “patient” should only be someone who receives health care services.

**PROPOSAL:** Amend § 101(40B) of the Bankruptcy Code to move the following language to the end of the paragraph: “relating to a patient”

**Amend § 101(40B) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (40B) The term “patient records” means any written document or a record  
3 recorded in a magnetic, optical, or other form of electronic medium relating to a  
4 patient.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**

(40B) The term “patient records” means any written document ~~relating to a~~  
~~patient~~ or a record recorded in a magnetic, optical, or other form of electronic  
medium relating to a patient.

**ANALYSIS:** Moving “relating to a patient” to the end of the paragraph would remove ambiguity in the effect of the term “or” in the paragraph.

**PROPOSAL:** Amend § 101(35)(B) of the Bankruptcy Code to change the following language: “23” to “21B”; “35” to “33A”

**Amend § 101(35)(B) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**

2 (35) The term "insured depository institution"—

3 (A) has the meaning given it in section 3(c)(2) of the Federal Deposit  
4 Insurance Act; and

5 (B) includes an insured credit union (except in the case of paragraphs (21B)  
6 and (33A) of this subsection).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**

(35) The term "insured depository institution"—

(A) has the meaning given it in section 3(c)(2) of the Federal Deposit  
Insurance Act; and

(B) includes an insured credit union (except in the case of paragraphs ~~(23)~~  
(21B) and ~~(35)~~ (33A) of this subsection).

**ANALYSIS:** BAPCPA incorrectly inserted “(23)” and “(35)” into § 101(35)(B) replacing (21B) and (33)(A), respectively.

**PROPOSAL:** Amend § 101(51D) of the Bankruptcy Code to include subparagraph (C): “excludes an individual unless the individual is primarily engaged in commercial or business activities”; and change reference in subparagraph (A) to include (C).

**Amend § 101(51D) of the Bankruptcy Code to read as follows:**

1 § 101. **Definitions**  
2 (51D) The term "small business debtor"--  
3 (A) subject to subparagraphs (B) and (C), means a person engaged in  
4 commercial or business activities (including any affiliate of such person that is  
5 also a debtor under this title and excluding a person whose primary activity is the  
6 business of owning or operating real property or activities incidental thereto) that  
7 has aggregate noncontingent liquidated secured and unsecured debts as of the  
8 date of the petition or the date of the order for relief in an amount not more than \$  
9 2,190,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in  
10 which the United States trustee has not appointed under section 1102(a)(1) a  
11 committee of unsecured creditors or where the court has determined that the  
12 committee of unsecured creditors is not sufficiently active and representative to  
13 provide effective oversight of the debtor; and  
14 . . .  
15 (C) excludes an individual unless the individual is primarily engaged in  
16 commercial or business activities.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 101. **Definitions**  
(51D) The term "small business debtor"—  
(A) subject to subparagraphs (B) and (C), means a person engaged in  
commercial or business activities (including any affiliate of such person that is  
also a debtor under this title and excluding a person whose primary activity is the  
business of owning or operating real property or activities incidental thereto) that  
has aggregate noncontingent liquidated secured and unsecured debts as of the  
date of the petition or the date of the order for relief in an amount not more than \$  
2,190,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in  
which the United States trustee has not appointed under section 1102(a)(1) a  
committee of unsecured creditors or where the court has determined that the  
committee of unsecured creditors is not sufficiently active and representative to  
provide effective oversight of the debtor; and  
. . .  
(C) excludes an individual unless the individual is primarily engaged in  
commercial or business activities.

**ANALYSIS:** Adding subparagraph C effectuates the uncodified BAPCPA provision to exclude individuals who are not primarily engaged in commercial or business activities.

**PROPOSAL:** Amend § 103(a) of the Bankruptcy Code to include the following language: “The court may order that additional provisions of chapters 1, 3, and 5 apply in a chapter 15 case.”

**Amend § 103(a) of the Bankruptcy Code to read as follows:**

**§ 103. Applicability of chapters**

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15. The court may order that additional provisions of chapters 1, 3 and 5 apply in a chapter 15 case.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

**§ 103. Applicability of chapters**

(a) Except as provided in section 1161 of this title, chapters 1, 3, and 5 of this title apply in a case under chapter 7, 11, 12, or 13 of this title, and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15. The court may order that additional provisions of this Title apply in a chapter 15 case.

**ANALYSIS:** The additional language clarifies ambiguity in the statute. Many other provisions in the bankruptcy code, especially in chapters 3 and 5, should apply to many chapter 15 cases. See SAMUEL L. BUFFORD, UNITED STATES INTERNATIONAL INSOLVENCY LAW 2008-2009, chapters 4-5 (Oxford 2009).

**PROPOSAL:** Amend § 109(h)(1) of the Bankruptcy Code to delete the following language: “date of”

**Amend § 109(h)(1) of the Bankruptcy Code to read as follows:**

1 § 109. **Who may be a debtor**  
2 (h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision  
3 of this section, an individual may not be a debtor under this title unless such  
4 individual has, during the 180-day period preceding the filing of the petition by  
5 such individual, received from an approved nonprofit budget and credit  
6 counseling agency described in section 111(a) an individual or group briefing  
7 (including a briefing conducted by telephone or on the Internet) that outlined the  
8 opportunities for available credit counseling and assisted such individual in  
9 performing a related budget analysis.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 109. **Who may be a debtor**  
(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision  
of this section, an individual may not be a debtor under this title unless such  
individual has, during the 180-day period preceding the ~~date of~~ filing of the  
petition by such individual, received from an approved nonprofit budget and  
credit counseling agency described in section 111(a) an individual or group  
briefing (including a briefing conducted by telephone or on the Internet) that  
outlined the opportunities for available credit counseling and assisted such  
individual in performing a related budget analysis.

**ANALYSIS:** Deleting the specified language authorizes credit counseling on the  
same date as the filing of the bankruptcy petition and resolves a dispute in the  
case law as to whether credit counseling may be obtained on the date of filing or  
must be obtained at least the day before.

**PROPOSAL:** Amend § 110(a)(1) of the Bankruptcy Code to include the following language after “filing”: “and includes a person who operates a website that prepares bankruptcy petitions or schedules”

**Amend § 110(a)(1) of the Bankruptcy Code to read as follows:**

1 § 110. **Penalty for persons who negligently or fraudulently prepare**  
2 **bankruptcy petitions**  
3 (a) In this section –  
4 (1) “bankruptcy petition preparer” mean a person, other than an attorney for the  
5 debtor or an employee of such attorney under the direct supervision of such  
6 attorney, who prepares for compensation a document for filing and includes a  
7 person who operates a website that prepares bankruptcy petitions or schedules;  
8 and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 110. **Penalty for persons who negligently or fraudulently prepare**  
**bankruptcy petitions**  
(a) In this section –  
(1) “bankruptcy petition preparer” mean a person, other than an attorney for the  
debtor or an employee of such attorney under the direct supervision of such  
attorney, who prepares for compensation a document for filing and includes a  
person who operates a website that prepares bankruptcy petitions or schedules;  
and

**ANALYSIS:** Many consumer debtors rely on the internet to obtain information for filing bankruptcy petitions. The additional language would implement *Frankfort Digital Servs. v. Neary (In re Reynoso)*, 315 B.R. 544 (B.A.P. 9th Cir. 2004), which subjects to § 110 the operators of websites providing advice to consumer bankruptcy debtors

**PROPOSAL:** Amend § 110(c)(2)(A) of the Bankruptcy Code to include the following language before “the Social Security account number”: “the last four digits of”

**Amend § 110(c)(2)(A) of the Bankruptcy Code to read as follows:**

1 § 110. **Penalty for persons who negligently or fraudulently prepare**  
2 **bankruptcy petitions**

3 (c) . . .

4 (2) (A) Subject to subparagraph (B), for purposes of this section, the  
5 identifying number of a bankruptcy petition preparer shall be the last four digits of  
6 the Social Security account number of each individual who prepared the  
7 document or assisted in its preparation.

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§ 110. **Penalty for persons who negligently or fraudulently prepare**  
**bankruptcy petitions**

(c)

(2) (A) Subject to subparagraph (B), for purposes of this section, the identifying number of a bankruptcy petition preparer shall be the last four digits of the Social Security account number of each individual who prepared the document or assisted in its preparation.

**ANALYSIS:** Including the proposed language would protect bankruptcy petition preparers from identity theft resulting from disclosure of their social security numbers in court filings.

**PROPOSAL:** Redesignate § 303(l) of the Bankruptcy Code as § 303(k).

**Amend § 303(l) of the Bankruptcy Code to read as follows:**

1 § 303. Involuntary cases  
2 (k)(1) If –  
3 (A) the petition under this section is false or contains any materially false,  
4 fictitious, or fraudulent statement;  
5 (B) the debtor is an individual; and  
6 (C) the court dismisses such petition,  
7 the court, upon the motion of the debtor, shall seal all the records of the court  
8 relating to such petition, and all references to such petition.

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§ 303. Involuntary cases  
~~(k)~~(k)(1) If –  
(D) the petition under this section is false or contains any materially false,  
fictitious, or fraudulent statement;  
(E) the debtor is an individual; and  
(F) the court dismisses such petition,  
the court, upon the motion of the debtor, shall seal all the records of the court  
relating to such petition, and all references to such petition.

**ANALYSIS:** Subparagraph (k) was deleted by BAPCPA, leaving a hole before 303(l).

**PROPOSAL:** Amend § 308(b)(4)(B) of the Bankruptcy Code to include the following language in front of “(A)(i)”: “(b)(4)”

**Amend § 308(b)(4)(B) of the Bankruptcy Code to read as follows:**

1 § 308. **Debtor reporting requirements**  
2 (b) A small business debtor shall file periodic financial and other reports  
3 containing information including—  
4 ...  
5 (4) (A) whether the debtor is—  
6 (i) in compliance in all material respects with postpetition requirements  
7 imposed by this title and the Federal Rules of Bankruptcy Procedure; and  
8 (ii) timely filing tax returns and other required government filings and paying  
9 taxes and other administrative expenses when due;  
10 (B) if the debtor is not in compliance with the requirements referred to in  
11 subparagraph (b)(4)(A)(i) or filing tax returns and other required government  
12 filings and making the payments referred to in subparagraph (A)(ii), what the  
13 failures are and how, at what cost, and when the debtor intends to remedy such  
14 failures; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 308. **Debtor reporting requirements**  
(b) A small business debtor shall file periodic financial and other reports containing information including—  
...  
(4) (A) whether the debtor is—  
(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and  
(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;  
(B) if the debtor is not in compliance with the requirements referred to in subparagraph (b)(4)(A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

**ANALYSIS:** The proposed amendment clarifies the reference to § 308(b)(4)(A)(i).

**PROPOSAL:** Redesignate § 308(b)(4)(C) of the Bankruptcy Code as § 308(b)(5).

**Amend § 308(b)(4)(C) of the Bankruptcy Code to read as follows:**

1 § 308. **Debtor reporting requirements**

2 (b) A small business debtor shall file periodic financial and other reports  
3 containing information including—

4 ...

5 (5) such other matters as are in the best interests of the debtor and creditors,  
6 and in the public interest in fair and efficient procedures under chapter 11 of this  
7 title.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 308. **Debtor reporting requirements**

(b) A small business debtor shall file periodic financial and other reports  
containing information including—

...

~~(4)(C)~~ (5) such other matters as are in the best interests of the debtor and  
creditors, and in the public interest in fair and efficient procedures under chapter  
11 of this title.

**ANALYSIS:** Redesignating the subparagraph clarifies the reading of the statute.

**PROPOSAL:** Amend § 330(a)(1) of the Bankruptcy Code to include the following language after “trustee”: “the debtor’s attorney” and “a foreign representative”

**Amend § 330(a)(1) of the Bankruptcy Code to read as follows:**

1 § 330. **Compensation of officers**

2 (a)(1) After notice to the parties in interest and the United States Trustee and a  
3 hearing, and subject to sections 326, 328, and 329, the court may award to a  
4 trustee, the debtor’s attorney, a foreign representative, a consumer privacy  
5 ombudsman appointed under section 332, an examiner, an ombudsman  
6 appointed under section 333, or a professional person employed under section  
7 327 or 1103 –

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§ 330. **Compensation of officers**

(a)(1) After notice to the parties in interest and the United States Trustee and a hearing, and subject to sections 326, 328, and 329, the court may award to a trustee, the debtor’s attorney, a foreign representative, a consumer privacy ombudsman appointed under section 332, an examiner, an ombudsman appointed under section 333, or a professional person employed under section 327 or 1103 –

**ANALYSIS:** Adding “the debtor’s attorney” corrects scrivener’s error in 1994 legislation deleting this phrase. While the United States Supreme Court held in *Lamie v. U.S. Trustee*, 540 U.S. 526 (2004) that the statute could be applied with scrivener’s error, it did not address the power of Congress to correct this error.

Adding “a foreign representative” clarifies court authority to award fees to a foreign representative in a chapter 15 case.

**PROPOSAL:** Amend § 331 of the Bankruptcy Code to include the following language after “a debtor’s attorney”: “a consumer privacy ombudsman, a patient care ombudsman”

**Amend § 331 of the Bankruptcy Code to read as follows:**

1 § 331. **Interim compensation**

2 A trustee, an examiner, a debtor's attorney, consumer privacy ombudsman,  
3 patient care ombudsman, or any professional person employed under section  
4 327 or 1103 of this title may apply to the court not more than once every 120  
5 days after an order for relief in a case under this title, or more often if the court  
6 permits, for such compensation for services rendered before the date of such an  
7 application or reimbursement for expenses incurred before such date as is  
8 provided under section 330 of this title. After notice and a hearing, the court may  
9 allow and disburse to such applicant such compensation or reimbursement.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 331. **Interim compensation**

A trustee, an examiner, a debtor's attorney, a consumer privacy ombudsman, a patient care ombudsman, or any professional person employed under section 327 or 1103 of this title may apply to the court not more than once every 120 days after an order for relief in a case under this title, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under section 330 of this title. After notice and a hearing, the court may allow and disburse to such applicant such compensation or reimbursement.

**ANALYSIS:** The proposed language clarifies that a consumer privacy ombudsman and a patient care ombudsman qualifies for a court award of interim compensation.

**PROPOSAL:** Amend § 342(b)(1)(A) of the Bankruptcy Code to replace “costs” with “filing fees”

**Amend § 342(b)(1)(A) of the Bankruptcy Code to read as follows:**

1 § 342. **Notice**

2 (b) Before the commencement of a case under this title by an individual whose  
3 debts are primarily consumer debts, the clerk shall give to such individual written  
4 notice containing—

5 (1) a brief description of—

6 (A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and filing  
7 fees of proceeding under each of those chapters; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 342. **Notice**

(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

(1) a brief description of—

(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and ~~costs~~  
filing fees of proceeding under each of those chapters; and

**ANALYSIS:** The clerk has specific information on filing fees, but lacks specific information on the other costs of a bankruptcy case.

**PROPOSAL:** Delete § 342(d) of the Bankruptcy Code and redesignate the subsequent subsections accordingly.

**Amend § 342 of the Bankruptcy Code to read as follows:**

1 § 342. **Notice**  
2 ...  
3 (d)  
4 (1) In a case under chapter 7 or 13 of this title [11 USCS §§ 701 et seq. or  
5 1301 et seq.] of a debtor who is an individual, a creditor at any time may both file  
6 with the court and serve on the debtor a notice of address to be used to provide  
7 notice in such case to such creditor.  
8 ...  
9 (e) (1) An entity may file with any bankruptcy court a notice of address to be used  
10 by all the bankruptcy courts or by particular bankruptcy courts, as so specified by  
11 such entity at the time such notice is filed, to provide notice to such entity in all  
12 cases under chapters 7 and 13 [11 USCS §§ 701 et seq. and 1301 et seq.]  
13 pending in the courts with respect to which such notice is filed, in which such  
14 entity is a creditor.  
15 ...  
16 (f) (1) Notice provided to a creditor by the debtor or the court other than in  
17 accordance with this section (excluding this subsection) shall not be effective  
18 notice until such notice is brought to the attention of such creditor. If such creditor  
19 designates a person or an organizational subdivision of such creditor to be  
20 responsible for receiving notices under this title and establishes reasonable  
21 procedures so that such notices receivable by such creditor are to be delivered to  
22 such person or such subdivision, then a notice provided to such creditor other  
23 than in accordance with this section (excluding this subsection) shall not be  
24 considered to have been brought to the attention of such creditor until such  
25 notice is received by such person or such subdivision.  
26 ...

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 342. **Notice**

...  
~~(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has arisen.~~

~~(e)~~ (d) ...

~~(f)~~ (e) ...

~~(g)~~ (f) ...

**ANALYSIS:** § 704(b)(1)(A) and § 342(d) deal with precisely the same subject matter. They are obviously in conflict and not amenable to reconciliation. § 342(d) should be stricken in its entirety because, unlike § 704(b)(1)(A), it has no mechanism for determining whether the presumption of abuse has arisen. Furthermore, the United States Trustee is much better suited to making this determination than is the clerk of the bankruptcy court.

Note: if § 342(d) is deleted, the remaining subsections need renumbering.

**PROPOSAL:** Amend § 362(c)(3)(B) of the Bankruptcy Code to include the following language after “motion”: “made within 30 days after the filing of the later case”; and delete “before the expiration of the 30-day period”

**Amend § 362(c)(3)(B) of the Bankruptcy Code to read as follows:**

1 § 362. **Automatic stay**  
2 (c) Except as provided in subsections (d), (e), (f), and (h) of this section--  
3 ...  
4 (3) if a single or joint case is filed by or against debtor who is an individual in a  
5 case under chapter 7, 11, or 13, and if a single or joint case of the debtor was  
6 pending within the preceding 1-year period but was dismissed, other than a case  
7 refiled under a chapter other than chapter 7 after dismissal under section 707(b)  
8 –  
9 ...  
10 (B) on the motion made within 30 days after the filing of the later case of a  
11 party in interest for continuation of the automatic stay and upon notice and a  
12 hearing, the court may extend the stay in particular cases as to any or all  
13 creditors (subject to such conditions or limitations as the court may then impose)  
14 after notice and a hearing completed only if the party in interest demonstrates  
15 that the filing of the later case is in good faith as to the creditors to be stayed; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 362. **Automatic stay**  
(c) Except as provided in subsections (d), (e), (f), and (h) of this section--  
...  
(3) if a single or joint case is filed by or against debtor who is an individual in a  
case under chapter 7, 11, or 13, and if a single or joint case of the debtor was  
pending within the preceding 1-year period but was dismissed, other than a case  
refiled under a chapter other than chapter 7 after dismissal under section 707(b)  
–  
...  
(B) on the motion heard within 30 days after the filing of the later case of a  
party in interest for continuation of the automatic stay and upon notice and a  
hearing, the court may extend the stay in particular cases as to any or all  
creditors (subject to such conditions or limitations as the court may then impose)  
after notice and a hearing completed ~~before the expiration of the 30-day period~~  
only if the party in interest demonstrates that the filing of the later case is in good  
faith as to the creditors to be stayed; and

**ANALYSIS:** It is sufficient to commence a hearing on a motion for continuation of the automatic stay within 30 days of the filing. Completing a hearing within 30 days (to extend the stay after the dismissal of a prior case) is a burden on the

court and the parties in interest, and is a potential trap for the debtor. Prompt disposition of the motion by the court is sufficient.

**PROPOSAL:** Amend § 362(c)(4)(A)(i) of the Bankruptcy Code to include the following language after “refiled under”: “a chapter other than chapter 7 after dismissal under”

**Amend § 362(c)(4)(A)(i) of the Bankruptcy Code to read as follows:**

1 § 362. **Automatic stay**  
2 (c) Except as provided in subsections (d), (e), (f), and (h) of this section—  
3 ...  
4 (4)(A)(i) if a single or joint case is filed by or against a debtor who is an  
5 individual under this title, and if 2 or more single or joint cases of the debtor were  
6 pending within the previous year but were dismissed, other than a case refiled  
7 under a chapter other than chapter 7 after dismissal under section 707(b), the  
8 stay under subsection (a) shall not go into effect upon the filing of the later case;  
9 and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 362. **Automatic stay**  
(c) Except as provided in subsections (d), (e), (f), and (h) of this section—  
...  
(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

**ANALYSIS:** The additional language clarifies a poorly drafted provision: a case cannot be filed (or refilled) under § 707(b).

**PROPOSAL:** Amend § 362(d)(4) of the Bankruptcy Code so that the last paragraph is designated as §362(p) with the appropriate reference to §362 (d)(4)

**Amend § 362(d)(4) of the Bankruptcy Code to read as follows:**

1 § 362. **Automatic stay**

2 (d) On request of a party in interest and after notice and a hearing, the court shall  
3 grant relief from the stay provided under subsection (a) of this section, such as  
4 by terminating, annulling, modifying, or conditioning such stay—

5 ...

6 (4) ...

7 (p) If recorded in compliance with applicable State laws governing notices of  
8 interests or liens in real property, an order entered under subsection (d)(4) shall  
9 be binding in any other case under this title purporting to affect such real property  
10 filed not later than 2 years after the date of the entry of such order by the court,  
11 except that a debtor in a subsequent case under this title may move for relief  
12 from such order based upon changed circumstances or for good cause shown,  
13 after notice and a hearing. Any Federal, State, or local governmental unit that  
14 accepts notices of interests or liens in real property shall accept any certified  
15 copy of an order described in this subsection for indexing and recording.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 362. **Automatic stay**

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(4) ...

(p) If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under ~~paragraph (4)~~ subsection (d)(4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

**ANALYSIS:** The proposed change gives the hanging paragraph a proper designation.

**PROPOSAL:** Amend § 362(i) of the Bankruptcy Code to change “shall not be presumed to be filed not in good faith” to the following language: “shall be presumed to be filed in good faith”

**Amends § 362(i) of the Bankruptcy Code to read as follows:**

1 § 362. **Automatic stay**

2 (i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the  
3 creation of a debt repayment plan, for purposes of subsection (c)(3), any  
4 subsequent case commenced by the debtor under any such chapter shall be  
5 presumed to be filed in good faith.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 362. **Automatic stay**

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter ~~shall not be presumed to be filed not in good faith~~ shall be presumed to be filed in good faith.

**ANALYSIS:** The proposed change eliminates the confusing double negative.

**PROPOSAL:** Amend § 362(l)(3)(B)(ii) of the Bankruptcy Code to change “serve on the lessor a certified copy” to “give notice to the lessor and the debtor of entry”. Amend § 362(l)(4)(B) of the Bankruptcy Code to change “serve upon the lessor and the debtor a certified” to “send to the lessor and the debtor a”. Amend § 362(m)(2)(D)(ii) of the Bankruptcy Code to change “serve upon the lessor and the debtor a certified copy” to “give notice of entry to the lessor”

**Amend § 362(l) of the Bankruptcy Code to read as follows:**

- 1 § 362. **Automatic stay**  
2 (l)(3)(B)(ii) the clerk of the court shall immediately give notice to the lessor and  
3 the debtor of entry of the court’s order upholding the lessor’s objection.  
4 . . .  
5 (l)(4)(B) the clerk of the court shall immediately send to the lessor and the debtor  
6 copy of the docket indicating the absence of a filed certification and the  
7 applicability of the exception to the stay under subsection (b)(22).  
8 . . .  
9 (m)(2)(D)(ii) the clerk of the court shall immediately give notice of entry to the  
10 lessor of the court’s order upholding the lessor’s certification.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 362. Automatic stay  
(l)(3)(B)(ii) the clerk of the court shall immediately ~~serve upon the lessor and the debtor a certified copy~~ give notice to the lessor and the debtor of entry of the court’s order upholding the lessor’s objection.

§ 362. Automatic stay  
(l)(4)(B) the clerk of the court shall immediately ~~serve upon the lessor and the debtor a certified~~ send to the lessor and the debtor a copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

§ 362. Automatic stay  
(m)(2)(D)(ii) the clerk of the court shall immediately ~~serve upon the lessor and the debtor a certified copy~~ give notice of entry to the lessor of the court’s order upholding the lessor’s certification.

**ANALYSIS:** Sections 362 (l) and (m) prescribe the procedures to be followed to prevent a debtor’s eviction from leased premises under particular circumstances, and require the court clerk to “serve a certified copy” of either the court’s docket or a particular order on the landlord and the debtor. First, courts do not typically “serve” notice in the manner of parties under the Federal Rules of Civil Procedure, but are generally required to simply send notice of an event or of the entry of an order. In the instance where the clerk is required to “serve” a notice,

the Federal Rules expressly mandate the manner of service. See e.g., Fed. R. Bankr. P. 9022(a), which provides that “[I]mmediately on the entry of a judgment or order the clerk shall serve a notice of the entry in the manner provided in Rule 5(b) Fed. R. Civ. P. on the contesting parties and on other entities as the court directs. . .”

Secondly, issues exist with the requirement that the clerk of the court send a certified copy of the court’s order or a certified copy of the docket upon the lessor and the debtor. Under item (2) of the Bankruptcy Court Miscellaneous Fee Schedule, promulgated by the Judicial Conference of the United States, the clerk must charge a \$9.00 statutory fee, but the statute does not provide a mechanism for collection of this mandatory fee.

This revision achieves the intention of the statute by providing adequate notice to the parties, but removes the unintended burden on the parties and the clerk’s office.

**PROPOSAL:** Replace § 363(d) of the Bankruptcy Code with the following:  
“(d) (1) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent consistent with any relief granted under subsection (b), (d), (e) or (f) of section 362.

(2) For a corporate debtor that is not a moneyed, business or commercial corporation, the trustee may use, sell, or lease property under subsection (b) or (c) of this section only in accordance with applicable non-bankruptcy law that governs the transfer of property by such a corporation.”

**Amend § 363 (d) of the Bankruptcy Code to read as follows:**

1 § 363. **Use, sale, or lease of property**

2 . . .

3 (d) (1) The trustee may use, sell, or lease property under subsection (b) or (c) of  
4 this section only to the extent consistent with any relief granted under subsection  
5 (b), (d), (e) or (f) of section 362.

6 (2) For a corporate debtor that is not a moneyed, business or commercial  
7 corporation, the trustee may use, sell, or lease property under subsection (b) or  
8 (c) of this section only in accordance with applicable non-bankruptcy law that  
9 governs the transfer of property by such a corporation.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 363. **Use, sale, or lease of property**

~~(d) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only—~~

~~(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and~~

~~(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.~~

(d) (1) The trustee may use, sell, or lease property under subsection (b) or (c) of this section only to the extent consistent with any relief granted under subsection (b), (d), (e) or (f) of section 362.

(2) For a corporate debtor that is not a moneyed, business or commercial corporation, the trustee may use, sell, or lease property under subsection (b) or (c) of this section only in accordance with applicable non-bankruptcy law that governs the transfer of property by such a corporation.

**ANALYSIS:** Read literally, section 363 (d)(1), as amended by BAPCPA, requires that all sales or property (including sales by a for-profit business debtor) comply with state law that governs the transfer of property by a nonprofit corporation or trust. This is an unintended drafting error.

Further references to nonprofit trusts should be deleted from this section because it is fundamental bankruptcy law that a nonprofit trust may never be a bankruptcy debtor. Thus, a bankruptcy case trustee would not administer a case of a nonprofit trust nor have access to the assets of a “debtor” nonprofit trust.

Therefore, this revision would provide that the requirement to comply with state law that governs the transfer of property by a nonprofit corporation only applies to nonprofit corporations, and would remove the erroneous reference to nonprofit trusts.

**PROPOSAL:** Amend § 365(b)(1)(A) of the Bankruptcy Code to delete all of the language added in 2005 (following “such default”) and add subsection 365(b)(2)(E): “nonmonetary obligations if it is impossible for the trustee to cure such breach by performing nonmonetary acts at and after the time of assumption, except that if such breach arises from a failure to operate in accordance with a non-residential real property lease, then such default shall be cured by performance at and after the time of assumption and pecuniary losses resulting from such breach shall be compensated in accordance with the provisions of paragraph (1).”

**Amend § 365(b)(1)(A) of the Bankruptcy Code to read as follows:**

1 § 365. **Executory contracts and unexpired leases**  
2 (b)(1) If there has been a default in an executory contract or unexpired lease of  
3 the debtor, the trustee may not assume such contract or lease unless, at the time  
4 of assumption of such contract or lease, the trustee –  
5 (A) cures, or provides adequate assurance that the trustee will promptly  
6 cure, such default;  
7 ...  
8 (2)(E) nonmonetary obligations if it is impossible for the trustee to cure such  
9 breach by performing nonmonetary acts at and after the time of assumption,  
10 except that if such breach arises from a failure to operate in accordance with a  
11 non-residential real property lease, then such default shall be cured by  
12 performance at and after the time of assumption and pecuniary losses resulting  
13 from such breach shall be compensated in accordance with the provisions of  
14 paragraph (1).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

**§ 365. Executory contracts and unexpired leases**

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default ~~other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;~~

...

(2)(E) nonmonetary obligations if it is impossible for the trustee to cure such breach by performing nonmonetary acts at and after the time of assumption, except that if such breach arises from a failure to operate in accordance with a non-residential real property lease, then such default shall be cured by performance at and after the time of assumption and pecuniary losses resulting from such breach shall be compensated in accordance with the provisions of paragraph (1).

**ANALYSIS:** Section 365(e)(2) is the proper location for exceptions to section 365(e)(1). In addition, this language is clearer.

**PROPOSAL:** Amend § 365(d)(4)(B)(i) of the Bankruptcy Code to change “lessor” to “lessee”

**Amend § 365(d)(4)(B)(i) of the Bankruptcy Code to read as follows:**

- 1 § 365. **Executory contracts and unexpired leases**
- 2 (d)(4)(B)(i) The court may extend the period determined under subparagraph (A),
- 3 prior to the expiration of the 120-day period, for 90 days on the motion of the
- 4 trustee or lessee for cause.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 365. **Executory contracts and unexpired leases**  
(d)(4)(B)(i) The court may extend the period determined under subparagraph (A),  
prior to the expiration of the 120-day period, for 90 days on the motion of the  
trustee or ~~lessor~~ lessee for cause.

**ANALYSIS:** The proposed change corrects a drafting error. The debtor referred to in this provision is a lessee, not a lessor.

**PROPOSAL:** Delete § 366(b) of the Bankruptcy Code; redesignate subsection (c) as subsection (b); and delete reference to subsection (b) in § 366(a).

**Amend § 366 of the Bankruptcy Code to read as follows:**

1 § 366. **Utility service**

2 (a) Except as provided in subsections (b) of this section, a utility may not alter,  
3 refuse, or discontinue service to, or discriminate against, the trustee or the debtor  
4 solely on the basis of the commencement of a case under this title or that a debt  
5 owed by the debtor to such utility for service rendered before the order for relief  
6 was not paid when due.

7 (b) (1) (A) For purposes of this subsection, the term "assurance of payment"  
8 means—

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 366. **Utility service**

(a) Except as provided in subsections (b) and ~~(c)~~ of this section, a utility may not alter, refuse, or discontinue service to, or discriminate against, the trustee or the debtor solely on the basis of the commencement of a case under this title or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.

~~(b) Such utility may alter, refuse, or discontinue service if neither the trustee nor the debtor, within 20 days after the date of the order for relief, furnishes adequate assurance of payment, in the form of a deposit or other security, for service after such date. On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.~~

~~(c)~~ (b) (1) (A) For purposes of this subsection, the term "assurance of payment" means—

**ANALYSIS:** Subsection (c) was drafted to replace subsection (b) altogether. This amendment cures a drafting error.

**PROPOSAL:** Amend § 366(c)(2) of the Bankruptcy Code to change “date of the filing of the petition” to “date of the order for relief”

**Amend § 366(c)(2) of the Bankruptcy Code to read as follows:**

1 § 366. **Utility service**

2 (c)(2) Subject to paragraphs (3) and (4), with respect to a case filed under  
3 chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue  
4 utility service, if during the 30-day period beginning on the date of the order for  
5 relief, the utility does not receive from the debtor or the trustee adequate  
6 assurance of payment for utility service that is satisfactory to the utility.

7 .

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 366. **Utility service**

(c)(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the ~~date of the filing of the petition~~ date of the order for relief, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

**ANALYSIS:** As enacted, this provision applies to an involuntary petition, where the merits of the petition may be in dispute, as well as to voluntary petitions. For such petitions, this provision is inconsistent with other provisions in the bankruptcy code, such as § 507(a)(3) (giving a third level priority to post-petition unsecured claims arising in the ordinary course of business before the order of relief or appointment of a trustee).

**PROPOSAL:** Amend § 366(c)(2) of the Bankruptcy Code to change “is satisfactory to the utility” to “meets the requirements of paragraph (1).”

**Amend § 366(c)(2) of the Bankruptcy Code to read as follows:**

1 § 366. **Utility service**

2 (c)(2) Subject to paragraphs (3) and (4), with respect to a case filed under  
3 chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue  
4 utility service, if during the 30-day period beginning on the date of the filing of the  
5 petition, the utility does not receive from the debtor or the trustee adequate  
6 assurance of payment for utility service that meets the requirements of paragraph  
7 (1).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 366. **Utility service**

(c)(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that ~~is satisfactory to the utility~~ meets the requirements of paragraph (1).

**ANALYSIS:** The present language makes all but the last subpart of section 366(c)(i)(A) superfluous. This change permits that language to have effect.

**PROPOSAL:** Amend § 507(a)(8) of the Bankruptcy Code to designate the last paragraph as section 507(e) (with appropriate reference to section 507(a)(8))

**Amend § 507(a)(8) of the Bankruptcy Code to read as follows:**

1 § 507. **Priorities**  
2 . . .  
3 (e) An otherwise applicable time period specified in subsection (a)(8) shall be  
4 suspended for any period during which a governmental unit is prohibited under  
5 applicable nonbankruptcy law from collecting a tax as a result of a request by the  
6 debtor for a hearing and an appeal of any collection action taken or proposed  
7 against the debtor, plus 90 days; plus any time during which the stay of  
8 proceedings was in effect in a prior case under this title or during which collection  
9 was precluded by the existence of 1 or more confirmed plans under this title, plus  
10 90 days.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 507. **Priorities**  
. . .  
(e) An otherwise applicable time period specified in ~~this paragraph~~ subsection (a)(8) shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.

**ANALYSIS:** The proposed change gives the hanging paragraph a proper designation.

**PROPOSAL:** Amend § 507(a)(8)(A) of the Bankruptcy Code to remove the period and insert “or” at the end of subparagraph (ii).

**Amend § 507(a)(8)(A) of the Bankruptcy Code to read as follows:**

1 § 507. **Priorities**

2 (a) The following expenses and claims have priority in the following order:

3 ...

4 (8) Eighth, allowed unsecured claims of governmental units, only to the extent  
5 that such claims are for-- (A) a tax on or measured by income or gross  
6 receipts for a taxable year ending on or before the date of the filing of the  
7 petition--

8 (i) for which a return, if required, is last due, including extensions, after  
9 three years before the date of the filing of the petition;

10 (ii) assessed within 240 days before the date of the filing of the petition,  
11 exclusive of—

12 (I) any time during which an offer in compromise with respect to that tax  
13 was pending or in effect during that 240-day period, plus 30 days; and

14 (II) any time during which a stay of proceedings against collections was in  
15 effect in a prior case under this title during that 240-day period, plus 90 days or

16 (iii) other than a tax of a kind specified in section 523(a)(1)(B) or  
17 523(a)(1)(C) of this title, not assessed before, but assessable, under applicable  
18 law or by agreement, after, the commencement of the case;

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 507. **Priorities**

(a) The following expenses and claims have priority in the following order:

...

(8) Eighth, allowed unsecured claims of governmental units, only to the extent  
that such claims are for—

(A) a tax on or measured by income or gross receipts for a taxable year  
ending on or before the date of the filing of the petition—

(i) for which a return, if required, is last due, including extensions, after  
three years before the date of the filing of the petition;

(ii) assessed within 240 days before the date of the filing of the petition,  
exclusive of—

(I) any time during which an offer in compromise with respect to that tax  
was pending or in effect during that 240-day period, plus 30 days; and

(II) any time during which a stay of proceedings against collections was in  
effect in a prior case under this title during that 240-day period, plus 90 days. or

(iii) other than a tax of a kind specified in section 523(a)(1)(B) or  
523(a)(1)(C) of this title, not assessed before, but assessable, under applicable  
law or by agreement, after, the commencement of the case;

**ANALYSIS:** Subparagraphs (i), (ii) and (iii) were previously in the disjunctive. The “or” was inadvertently deleted, making them conjunctive.

**PROPOSAL:** Amend § 507(a)(10) of the Bankruptcy Code to change “or vessel” to “,vessel, or aircraft”

**Amend § 507(a)(10) of the Bankruptcy Code to read as follows:**

1 § 507. **Priorities**

2 (a) The following expenses and claims have priority in the following order:

3 ...

4 (10) Tenth, allowed claims for death or personal injury resulting from the  
5 operation of a motor vehicle, vessel, or aircraft if such operation was unlawful  
6 because the debtor was intoxicated from using alcohol, a drug, or another  
7 substance.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 507. **Priorities**

(a) The following expenses and claims have priority in the following order:

...  
(10) Tenth, allowed claims for death or personal injury resulting from the  
operation of a motor vehicle ~~or vessel,~~ vessel, or aircraft if such operation was  
unlawful because the debtor was intoxicated from using alcohol, a drug, or  
another substance.

**ANALYSIS:** The proposed change makes this section parallel (as it was previously) to the treatment of conduct resulting from drunkenness in § 523(a)(9).

**PROPOSAL:** Amend § 521(a)(1)(v) of the Bankruptcy Code to change “monthly net income” to “monthly income and expenses”

**Amend § 521(a)(1)(v) of the Bankruptcy Code to read as follows:**

**§ 521. Debtor’s duties**

(a) The debtor shall—

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

...

(v) a statement of the amount of monthly income and expenses, itemized to show how the amount is calculated; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

**§ 521. Debtor’s duties**

(a) The debtor shall—

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

...

(v) a statement of the amount of ~~monthly net income~~ monthly income and expenses, itemized to show how the amount is calculated; and

**ANALYSIS:** Coordinates statutory language with Schedules I and J, which provide sufficient information to the trustee and creditors.

**PROPOSAL:** Amend § 521(a)(3) of the Bankruptcy Code to include “is” after “auditor”; change “serving under” to “performing an audit of the case pursuant to”; and include “or auditor” after “trustee”.

**Amend § 521(a)(3) of the Bankruptcy Code to read as follows:**

- 1 § 521. **Debtor’s duties**  
2 (a) The debtor shall –  
3 ...  
4 (3) if a trustee is serving in the case or an auditor is performing an audit of the  
5 case pursuant to section 586(f) of title 28, cooperate with the trustee or auditor as  
6 necessary to enable the trustee or auditor to perform the trustee’s duties under  
7 this title;

**(Legislative Draft - - Additions are underlined; deletions struck through)**

- § 521. Debtor’s duties  
(a) The debtor shall –  
...  
(3) if a trustee is serving in the case or an auditor is ~~serving under~~ performing  
an audit of the case pursuant to section 586(f) of title 28, cooperate with the  
trustee or auditor as necessary to enable the trustee or auditor to perform the  
trustee’s duties under this title;

**ANALYSIS:** The proposed change corrects grammatical mistakes.

**PROPOSAL:** Amend § 521(a)(4) of the Bankruptcy Code to include “is” after “auditor”; change “serving under” to “performing an audit of the case pursuant to”; and include “or auditor” after “trustee”.

**Amend § 521(a)(4) of the Bankruptcy Code to read as follows:**

- 1 § 521. Debtor’s duties  
2 (a) The debtor shall –  
3 ...  
4 (4) if a trustee is serving in the case or an auditor is performing an audit of the  
5 case pursuant to section 586(f) of title 28, surrender to the trustee or auditor all  
6 property of the estate and any recorded information, including books, documents,  
7 records, and papers, relating to the property of the estate, whether or not  
8 immunity is granted under section 344 of this title;

**(Legislative Draft - - Additions are underlined; deletions struck through)**

- § 521. Debtor’s duties  
(a) The debtor shall –  
...  
(4) if a trustee is serving in the case or an auditor is ~~serving under~~ performing  
an audit of the case pursuant to section 586(f) of title 28, surrender to the trustee  
or auditor all property of the estate and any recorded information, including  
books, documents, records, and papers, relating to the property of the estate,  
whether or not immunity is granted under section 344 of this title;

**ANALYSIS:** The proposed change corrects grammatical mistakes.

**PROPOSAL:** Amend § 521(a)(6) of the Bankruptcy Code to designate the last paragraph as section 521(k) (with appropriate reference to section 521(a)(6)).

**Amend § 521(a)(6) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor's duties**  
2 (a) The debtor shall –  
3 . . .  
4 (k) If the debtor fails to so act within the 45-day period referred to in subsection  
5 (a)(6), the stay under section 362(a) is terminated with respect to the personal  
6 property of the estate or of the debtor which is affected, such property shall no  
7 longer be property of the estate, and the creditor may take whatever action as to  
8 such property as is permitted by applicable nonbankruptcy law, unless the court  
9 determines on the motion of the trustee filed before the expiration of such 45-day  
10 period, and after notice and a hearing, that such property is of consequential  
11 value or benefit to the estate, orders appropriate adequate protection of the  
12 creditor's interest, and orders the debtor to deliver any collateral in the debtor's  
13 possession to the trustee; and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor's duties**  
(a) The debtor shall –  
. . .  
(k) If the debtor fails to so act within the 45-day period referred to in ~~paragraph~~  
~~(6)~~ subsection (a)(6), the stay under section 362(a) is terminated with respect to  
the personal property of the estate or of the debtor which is affected, such  
property shall no longer be property of the estate, and the creditor may take  
whatever action as to such property as is permitted by applicable nonbankruptcy  
law, unless the court determines on the motion of the trustee filed before the  
expiration of such 45-day period, and after notice and a hearing, that such  
property is of consequential value or benefit to the estate, orders appropriate  
adequate protection of the creditor's interest, and orders the debtor to deliver any  
collateral in the debtor's possession to the trustee; and

**ANALYSIS:** The proposed change gives this hanging paragraph a proper designation.

**PROPOSAL:** Amend § 521(f) of the Bankruptcy Code to change “file with the court” to “file with the trustee”.

**Amend § 521(f) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor’s duties**

2 (f) At the request of the court, the United States trustee, or any party in interest in  
3 a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the  
4 trustee –

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor’s duties**

(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall ~~file with the court~~ file with the trustee –

**ANALYSIS:** The court has no need for a debtor’s income tax returns, and protecting their confidentiality is difficult and inconsistent with CM-ECF. The trustee should be the custodian of such documents because the trustee is not subject to the court’s obligations to make files available to the public.

**PROPOSAL:** Amend § 521(h) of the Bankruptcy Code to include the following language before “the United States trustee”: “the court”.

**Amend § 521(h) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor’s duties**

2 (h) If requested by the court, the United States trustee, or the trustee, the debtor  
3 shall provide—

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor’s duties**

(h) If requested by the court, the United States trustee, or ~~by~~ the trustee, the debtor shall provide—

**ANALYSIS:** This change would authorize the court to verify identification of a debtor to prevent fraudulent filings.

**PROPOSAL:** Amend § 521(i)(1) of the Bankruptcy Code to change (2) to (3).

**Amend § 521(i)(1) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor's duties**

2 (i)(1) Subject to paragraphs (3) and (4) and notwithstanding section 707(a), if an  
3 individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the  
4 information required under subsection (a)(1) within 45 days after the date of the  
5 filing of the petition, the case shall be automatically dismissed effective on the  
6 46th day after the date of the filing of the petition.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor's duties**

(i)(1) Subject to paragraphs ~~(2)~~(3) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

**ANALYSIS:** The proposed change corrects reference to 521(i)(3).

**PROPOSAL:** Amend § 521(i)(1) of the Bankruptcy Code to delete the following language: “automatically”.

**Amend § 521(i)(1) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor’s duties**

2 (i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an  
3 individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the  
4 information required under subsection (a)(1) within 45 days after the date of the  
5 filing of the petition, the case shall be dismissed effective on the 46th day after  
6 the date of the filing of the petition.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor’s duties**

(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be ~~automatically~~ dismissed effective on the 46th day after the date of the filing of the petition.

**ANALYSIS:** Due process prevents the dismissal of a case without notice; in addition, no automatic dismissal is possible under CM/ECF, the national clerk’s office computer program.

**PROPOSAL:** Amend § 521(i)(2) of the Bankruptcy Code to change “5” to “14”.

**Amend § 521(i)(2) of the Bankruptcy Code to read as follows:**

1 § 521. **Debtor’s duties**

2 (i)(1) ...

3 (2) Subject to paragraph (4) and with respect to a case described in paragraph  
4 (1), any party in interest may request the court to enter an order dismissing the  
5 case. If requested, the court shall enter an order of dismissal not later than 14  
6 days after such request.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 521. **Debtor’s duties**

(i)(1) ...

(2) Subject to paragraph (4) and with respect to a case described in paragraph  
(1), any party in interest may request the court to enter an order dismissing the  
case. If requested, the court shall enter an order of dismissal not later than ~~5~~ 14  
days after such request.

**ANALYSIS:** Due process requires effective notice before dismissal of a case – 5 days is insufficient to give effective notice. In addition, 5 days is inconsistent with recent amendments to the various sets of federal procedural rules, which set all time requirements in increments of 7 (i.e., 7, 14, 21, etc.).

**PROPOSAL:** Amend § 522(b)(3)(C) of the Bankruptcy Code to designate last paragraph as section 522(r) (with appropriate reference to section 522(b)(3)).

**Amend § 522(b)(3)(C) of the Bankruptcy Code to read as follows:**

1 § 522. **Exemptions**

2 (b)(3)Property listed in this paragraph is—

3 ...

4 (r) If the effect of the domiciliary requirement under subsection (b)(3) is to render  
5 the debtor ineligible for any exemption, the debtor may elect to exempt property  
6 that is specified under subsection (d).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 522. **Exemptions**

(b)(3)Property listed in this paragraph is—

...

(r) If the effect of the domiciliary requirement under ~~subparagraph (A)~~ subsection  
(b)(3) is to render the debtor ineligible for any exemption, the debtor may elect to  
exempt property that is specified under subsection (d).

**ANALYSIS:** The proposed change gives the hanging paragraph a proper designation.

**PROPOSAL:** Amend § 522(f)(1)(B) of the Bankruptcy Code to delete the following language: “wearing apparel, appliances” and “,or jewelry”; add “or” in front of “musical instruments”.

**Amend § 522(f)(1)(B) of the Bankruptcy Code to read as follows:**

1 § 522. **Exemptions**  
2 (f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the  
3 debtor may avoid the fixing of a lien on an interest of the debtor in property to the  
4 extent that such lien impairs an exemption to which the debtor would have been  
5 entitled under subsection (b) of this section, if such lien is—  
6 ...  
7 (B) a nonpossessory, nonpurchase-money security interest in any—  
8 (i) household furnishings, household goods, books, animals, crops, or  
9 musical instruments that are held primarily for the personal, family, or household  
10 use of the debtor or a dependent of the debtor,

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 522. Exemptions  
(f)(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—  
...  
(B) a nonpossessory, nonpurchase-money security interest in any—  
(i) household furnishings, household goods, ~~wearing apparel, appliances,~~ books, animals, crops, or musical instruments, ~~or jewelry~~ that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

**ANALYSIS:** This language is superfluous: § 522(f)(4) defines “household goods” to include these categories, except that it only applies to jewelry (excluding wedding rings) with a fair market value exceeding \$500.

**PROPOSAL:** Amend § 522(p)(1) of the Bankruptcy Code delete all of the language before “a debtor”; and add “under state or local law” after “may not exempt”.

**Amend § 522(p)(1) of the Bankruptcy Code to read as follows:**

1 § 522. **Exemptions**

2 (p)(1) A debtor may not exempt under state or local law any amount of interest  
3 that was acquired by the debtor during the 1215-day period preceding the date of  
4 the filing of the petition that exceeds in the aggregate \$ 136,875 in value in—

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 522. **Exemptions**

(p)(1) ~~Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law,~~ a A debtor may not exempt under state or local law any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$ 136,875 in value in—

**ANALYSIS:** Makes effective the congressional intent to apply the \$125,000 homestead exemption nationwide. This reverses outcome in *In re McNabb*, 326 B.R. 785 (Bankr. D. Ariz. 2005), which found that the language of the statute as enacted did not apply the \$125,000 exemption in opt-out states.

**PROPOSAL:** Amend § 523(a)(18) of the Bankruptcy Code to designate the last paragraph as section 523(f) (with appropriate reference to section 523(a)(18)).

**Amend § 523(a)(18) of the Bankruptcy Code to read as follows:**

1 § 523. **Exceptions to discharge**

2 . . .

3 (f) Nothing in subsection (a)(18) may be construed to provide that any loan  
4 made under a governmental plan under section 414(d), or a contract or account  
5 under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim  
6 or a debt under this title.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 523. **Exceptions to discharge**

~~(a)(18)but nothing in this paragraph may be construed to provide that any loan  
made under a governmental plan under section 414(d), or a contract or account  
under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim  
or a debt under this title; or~~

. . .

(f) but ~~Nothing in this paragraph~~ subsection (a)(18) may be construed to provide  
that any loan made under a governmental plan under section 414(d), or a  
contract or account under section 403(b), of the Internal Revenue Code of 1986  
constitutes a claim or a debt under this title; ~~or.~~

**ANALYSIS:** The proposed change gives the hanging paragraph a proper designation.

**PROPOSAL:** Amend § 523(a)(19) of the Bankruptcy Code to designate last paragraph as section 523(g) (with appropriate reference to section 523(a)(19)).

**Amend § 523(a)(19) of the Bankruptcy Code to read as follows:**

1 § 523. **Exceptions to discharge**

2 . . .

3 (g) For purposes of subsection (a)(19), the term "return" means a return that  
4 satisfies the requirements of applicable nonbankruptcy law (including applicable  
5 filing requirements). Such term includes a return prepared pursuant to section  
6 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a  
7 written stipulation to a judgment or a final order entered by a nonbankruptcy  
8 tribunal, but does not include a return made pursuant to section 6020(b) of the  
9 Internal Revenue Code of 1986, or a similar State or local law.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 523. **Exceptions to discharge**

(a)(19) . . .

~~For purposes of this subsection, the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.~~

. . .

(g) For purposes of ~~this~~ subsection (a)(19), the term "return" means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.

**ANALYSIS:** The proposed change gives the hanging paragraph a proper designation.

**PROPOSAL:** Amends § 526(a)(4) of the Bankruptcy Code to include the following language after “under this title”: “and discharging such debt”.

**Amend § 526(a)(4) of the Bankruptcy Code to read as follows:**

1 § 526. **Restrictions on debt relief agencies**

2 (a) A debt relief agency shall not –

3 ...

4 (4) advise an assisted person or prospective assisted person to incur more  
5 debt in contemplation of such person filing a case under this title and  
6 discharging such debt or to pay an attorney or bankruptcy petition preparer fee  
7 or charge for services performed as part of preparing for or representing a  
8 debtor in a case under this title.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 526. **Restrictions on debt relief agencies**

(b) A debt relief agency shall not –

...

(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title and discharging such debt or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

**ANALYSIS:** This change would permit an attorney to advise a client to obtain appropriate refinancing of existing debt (such as at a lower interest rate) or borrowing money, provided that the debtor does not contemplate discharging the debt in bankruptcy. This change adopts the narrow construction given in *Hersh v. United States*, 553 F.3d 743 (5<sup>th</sup> Cir. 2008), *petition for cert. filed*, 77 U.S.L.W. 3559 (U.S. Mar. 18, 2009) (No. 08-1174) and avoids the unconstitutionality of the provision found in *Milavetz, Gallop & Milavetz v. United States*, 541 F.3d 785 (8<sup>th</sup> Cir. 2008), *cert. granted*, 129 S.Ct. 2766 (2009).

**PROPOSAL:** Amend § 528 of the Bankruptcy Code to include the following subsection: “(c) This section does not apply if a debt relief agency provides bankruptcy assistance services to an assisted person who does not file a bankruptcy case within 180 days thereafter.”

**Amend § 528(c) of the Bankruptcy Code to read as follows:**

- 1 § 528. **Requirements for debt relief agencies**
- 2 . . .
- 3 (c) This section does not apply if a debt relief agency provides bankruptcy
- 4 assistance services to an assisted person who does not file a bankruptcy case
- 5 within 180 days thereafter.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 528. **Requirements for debt relief agencies**

. . .

(c) This section does not apply if a debt relief agency provides bankruptcy assistance services to an assisted person who does not file a bankruptcy case within 180 days thereafter.

**ANALYSIS:** This change would avoid possible interpretation of section 528 that makes it applicable to a debt relief agency giving advice to an assisted person who does not file a bankruptcy case.

**PROPOSAL:** Amend § 704(b)(1)(A) of the Bankruptcy Code to change “the date of the first meeting” to “the conclusion of the meeting”; and to correct the reference to the meeting of creditors to the meeting of creditors and equity security holders under § 341.

**Amend § 704(b)(1)(A) of the Bankruptcy Code to read as follows:**

1 § 704. **Duties of trustee**

2 (b) (1) With respect to a debtor who is an individual in a case under this chapter--

3 (A) the United States trustee (or the bankruptcy administrator, if any) shall  
4 review all materials filed by the debtor and, not later than 10 days after the  
5 conclusion of the meeting of creditors and equity security holders pursuant to  
6 §341 of this Title, file with the court a statement as to whether the debtor's case  
7 would be presumed to be an abuse under section 707(b); and

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 704. **Duties of trustee**

(b) (1) With respect to a debtor who is an individual in a case under this chapter--

(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after ~~the date of the first meeting~~ the conclusion of the meeting of creditors and equity security holders pursuant to §341 of this Title, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

**ANALYSIS:** There is no “first meeting of creditors”: this was abolished in 1984. This change would give the U.S. Trustee 10 days from the conclusion of the meeting of creditors to file the required statement, and would not require the filing until the Trustee has obtained all available information from the debtor. This change also corrects the title of meeting of creditors and equity security holders under § 341.

**PROPOSAL:** Amend § 707(a)(3) of the Bankruptcy Code to change “paragraph (1) of section 521” to “paragraph (a)(1) of section 521”.

**Amend § 707(a)(3) of the Bankruptcy Code to read as follows:**

1 § 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
2 (a) The court may dismiss a case under this chapter only after notice and a  
3 hearing and only for cause, including—  
4 (1) unreasonable delay by the debtor that is prejudicial to creditors;  
5 (2) nonpayment of any fees or charges required under chapter 123 of title 28;  
6 and  
7 (3) failure of the debtor in a voluntary case to file, within fifteen days or such  
8 additional time as the court may allow after the filing of the petition commencing  
9 such case, the information required by paragraph (a)(1) of section 521, but only  
10 on a motion by the United States trustee.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
(a) The court may dismiss a case under this chapter only after notice and a  
hearing and only for cause, including—  
(1) unreasonable delay by the debtor that is prejudicial to creditors;  
(2) nonpayment of any fees or charges required under chapter 123 of title 28;  
and  
(3) failure of the debtor in a voluntary case to file, within fifteen days or such  
additional time as the court may allow after the filing of the petition commencing  
such case, the information required by ~~paragraph (1) of section 521~~ paragraph  
(a)(1) of section 521, but only on a motion by the United States trustee.

**ANALYSIS:** BAPCPA redesignated paragraph (1) of section 521 as section 521(a)(1) – this change corrects the reference.

**PROPOSAL:** Amend § 707(b)(3) of the Bankruptcy Code to change “subparagraph (A)(i) of such paragraph” to “subparagraph (A)(i) of paragraph (2)”.

**Amend § 707(b)(3) of the Bankruptcy Code to read as follows:**

1 § 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
2 (b) ...  
3 (3) In considering under paragraph (1) whether the granting of relief would be  
4 an abuse of the provisions of this chapter in a case in which the presumption in  
5 subparagraph of (A)(i) of paragraph (2) does not arise or is rebutted, the court  
6 shall consider—

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
(b) ...  
(3) In considering under paragraph (1) whether the granting of relief would be  
an abuse of the provisions of this chapter in a case in which the presumption in  
~~subparagraph (A)(i) of such paragraph~~ subparagraph of (A)(i) of paragraph (2)  
does not arise or is rebutted, the court shall consider—

**ANALYSIS:** This reference is to the presumption under the means test, which is  
contained in paragraph (2), not paragraph (1).

**PROPOSAL:** Amend § 707(b)(5)(A)(ii) of the Bankruptcy Code to delete subclause (II); and incorporate subclause (I) into clause (ii).

**Amend § 707(b)(5)(A)(ii) of the Bankruptcy Code to read as follows:**

1 § 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
2 (b) ...  
3 (5) (A) Except as provided in subparagraph (B) and subject to paragraph (6),  
4 the court, on its own initiative or on the motion of a party in interest, in  
5 accordance with the procedures described in rule 9011 of the Federal Rules of  
6 Bankruptcy Procedure, may award a debtor all reasonable costs (including  
7 reasonable attorneys' fees) in contesting a motion filed by a party in interest  
8 (other than a trustee or United States trustee (or bankruptcy administrator, if  
9 any)) under this subsection if—  
10 (i) the court does not grant the motion; and  
11 (ii) the court finds that—  
12 (I) the position of the party that filed the motion violated rule 9011 of the  
13 Federal Rules of Bankruptcy Procedure.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
(b) ...  
(5) (A) Except as provided in subparagraph (B) and subject to paragraph (6),  
the court, on its own initiative or on the motion of a party in interest, in  
accordance with the procedures described in rule 9011 of the Federal Rules of  
Bankruptcy Procedure, may award a debtor all reasonable costs (including  
reasonable attorneys' fees) in contesting a motion filed by a party in interest  
(other than a trustee or United States trustee (or bankruptcy administrator, if  
any)) under this subsection if—  
(i) the court does not grant the motion; and  
(ii) the court finds that  
—~~(I) the position of the party that filed the motion violated rule 9011 of the~~  
~~Federal Rules of Bankruptcy Procedure; or,~~  
~~(II) the attorney (if any) who filed the motion did not comply with the~~  
~~requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was~~  
~~made solely for the purpose of coercing a debtor into waiving a right~~  
~~guaranteed to the debtor under this title.~~

**ANALYSIS:** Subclause (II) of § 707(b)(5)(A)(ii) is so riddled with error that the proper remedy is to strike it in its entirety. Its most obvious problem is the cross reference to § 707(b)(4)(C)(i) and (ii), with which it is impossible for a creditor's attorney to comply because clause (ii) requires a consumer debtor's attorney to certify that the debtor's petition is not an abuse. Section 707(b)(5)(A)(ii)(II) also creates different standards for the creditor and its attorney in the same case and

with respect to the same motion to dismiss, with the greater possibility for sanctions falling on the client rather than the attorney. Thus, if a creditor's attorney files a motion to dismiss a debtor's chapter 7 case and that motion violates Rule 9011 but does not "coerce the debtor into waiving a right guaranteed" under the code, the creditor can be sanctioned, but by the statute's plain language, the attorney cannot be sanctioned, even if the attorney is equally (if not more) culpable.

**PROPOSAL:** Amend § 707(c) of the Bankruptcy Code to add subsection (4) with the following language: “A presumption of abuse under this section is rebutted if the court finds that the interests of creditors would be better served by a chapter 7 case.”

**Amend § 707(c) of the Bankruptcy Code to read as follows:**

- 1 § 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
2 (c)  
3 (1) In this subsection—  
4 (A) the term "crime of violence" has the meaning given such term in section  
5 16 of title 18; and  
6 (B) the term "drug trafficking crime" has the meaning given such term in  
7 section 924(c)(2) of title 18.  
8 (2) Except as provided in paragraph (3), after notice and a hearing, the court,  
9 on a motion by the victim of a crime of violence or a drug trafficking crime, may  
10 when it is in the best interest of the victim dismiss a voluntary case filed under  
11 this chapter by a debtor who is an individual if such individual was convicted of  
12 such crime.  
13 (3) The court may not dismiss a case under paragraph (2) if the debtor  
14 establishes by a preponderance of the evidence that the filing of a case under  
15 this chapter is necessary to satisfy a claim for a domestic support obligation.  
16 (4) A presumption of abuse under this section is rebutted if the court finds that  
17 the interests of creditors would be better served by a chapter 7 case.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

- § 707. **Dismissal of a case or conversion to a case under chapter 11 or 13**  
(c)  
(1) In this subsection—  
(A) the term "crime of violence" has the meaning given such term in section  
16 of title 18; and  
(B) the term "drug trafficking crime" has the meaning given such term in  
section 924(c)(2) of title 18.  
(2) Except as provided in paragraph (3), after notice and a hearing, the court,  
on a motion by the victim of a crime of violence or a drug trafficking crime, may  
when it is in the best interest of the victim dismiss a voluntary case filed under  
this chapter by a debtor who is an individual if such individual was convicted of  
such crime.  
(3) The court may not dismiss a case under paragraph (2) if the debtor  
establishes by a preponderance of the evidence that the filing of a case under  
this chapter is necessary to satisfy a claim for a domestic support obligation.  
(4) A presumption of abuse under this section is rebutted if the court finds that  
the interests of creditors would be better served by a chapter 7 case.

**ANALYSIS:** Creditors may be better off with a chapter 7 case, if the estate has assets that can be liquidated and distributed to creditors. The interests of creditors should not be ignored in dismissing a chapter 7 case on the motion of a victim of a crime of violence or a drug trafficking crime. Creditors usually prefer to be paid earlier than they might be paid under a chapter 13 plan, especially since such a plan may not be successful.

**PROPOSAL:** Amend § 1104 of the Bankruptcy Code to delete “or examiner” from section 1104(a)(3) and add a new (c)(3): “grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of an examiner is in the best interests of creditors and the estate.”

**Amend § 1104 of the Bankruptcy Code to read as follows:**

- 1 § 1104. **Appointment of trustee or examiner**  
2 (a) At any time after the commencement of the case but before confirmation of a  
3 plan, on request of a party in interest or the United States trustee, and after  
4 notice and a hearing, the court shall order the appointment of a trustee--  
5 ...  
6 (3) if grounds exist to convert or dismiss the case under section 1112, but the  
7 court determines that the appointment of a trustee is in the best interests of  
8 creditors and the estate.  
9 ...  
10 (c) If the court does not order the appointment of a trustee under this section,  
11 then at any time before the confirmation of a plan, on request of a party in  
12 interest or the United States trustee, and after notice and a hearing, the court  
13 shall order the appointment of an examiner to conduct such an investigation of  
14 the debtor as is appropriate, including an investigation of any allegations of fraud,  
15 dishonesty, incompetence, misconduct, mismanagement, or irregularity in the  
16 management of the affairs of the debtor of or by current or former management  
17 of the debtor, if—  
18 (1) such appointment is in the interests of creditors, any equity security holders,  
19 and other interests of the estate;  
20 (2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods,  
21 services, or taxes, or owing to an insider, exceed \$ 5,000,000; or  
22 (3) grounds exist to convert or dismiss the case under section 1112, but the  
23 court determines that the appointment of an examiner is in the best interests of  
24 creditors and the estate.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1104. Appointment of trustee or examiner

(a) At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—

...  
(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee ~~or an examiner~~ is in the best interests of creditors and the estate.

...

(c) If the court does not order the appointment of a trustee under this section, then at any time before the confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of an examiner to conduct such an investigation of the debtor as is appropriate, including an investigation of any allegations of fraud, dishonesty, incompetence, misconduct, mismanagement, or irregularity in the management of the affairs of the debtor of or by current or former management of the debtor, if—

(1) such appointment is in the interests of creditors, any equity security holders, and other interests of the estate; ~~or~~

(2) the debtor's fixed, liquidated, unsecured debts, other than debts for goods, services, or taxes, or owing to an insider, exceed \$ 5,000,000- ; or

(3) grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of an examiner is in the best interests of creditors and the estate.

**ANALYSIS:** The proposed changes would consolidate the examiner provisions in § 1104(c) and eliminates non-parallel language in § 1104(a)(3).

**PROPOSAL:** Amend § 1112(b)(1) of the Bankruptcy Code to restore “or the United States trustee or bankruptcy administrator”

**Amend § 1112(b)(1) of the Bankruptcy Code to read as follows:**

1 § 1112. **Conversion or dismissal**

2 (b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of  
3 this section, and section 1104(a)(3), on request of a party in interest or the United  
4 States trustee or bankruptcy administrator, and after notice and a hearing, absent  
5 unusual circumstances specifically identified by the court that establish that the  
6 requested conversion or dismissal is not in the best interests of creditors and the  
7 estate, the court shall convert a case under this chapter to a case under chapter  
8 7 or dismiss a case under this chapter, whichever is in the best interests of  
9 creditors and the estate, if the movant establishes cause.

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§ 1112. **Conversion or dismissal**

(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

**ANALYSIS:** The proposed changes restore the power of a U.S. trustee to move for dismissal or conversion of a chapter 11 case. This deletion in 2005 appears to be inadvertent.

**PROPOSAL:** Amend § 1112(b)(2) of the Bankruptcy Code to delete the following language: “absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate,”

**Amend § 1112(b)(2) of the Bankruptcy Code to read as follows:**

- 1 § 1112. Conversion or dismissal
- 2 (b) ...
- 3 (2) The relief provided in paragraph (1) shall not be granted if the debtor or
- 4 another party in interest objects and establishes that—

**(Legislative Draft - - Additions are underlined; deletions struck through)**

- § 1112. Conversion or dismissal
- (b) ...
- (2) The relief provided in paragraph (1) shall not be granted ~~absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate,~~ if the debtor or another party in interest objects and establishes that—

**ANALYSIS:** This language is redundant because it duplicates the language in section 1112(b)(1).

**PROPOSAL:** Amend § 1115(c) of the Bankruptcy Code to add the following subsection: “(c) An individual who has filed a petition under this chapter may use property of the estate for reasonable living expenses.”

**Amend § 1115(c) of the Bankruptcy Code to read as follows:**

1 § 1115. **Property of the Estate**

2 . . .

3 (c) An individual who has filed a petition under this chapter may use property of  
4 the estate for ordinary and reasonable living expenses.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1115. Property of the Estate

. . .

(c) An individual who has filed a petition under this chapter may use property of the estate for ordinary and reasonable living expenses.

**ANALYSIS:** Including the proposed subsection eliminates the possible need for a court order to permit a chapter 11 debtor to pay ordinary living expenses. Under this new provision added in 2005, such an order may be required because such use may not be “in the ordinary course of business” under § 363(b)(1). Alternatively, a provision may be added that excludes from the chapter 11 estate such funds used for ordinary and reasonable living expenses during the chapter 11 case.

**PROPOSAL:** Amend § 1125(f)(3) of the Bankruptcy Code to delete from paragraph (A): “the court may conditionally approve a disclosure statement” and substitute: “after determining under subparagraph (1) that a plan provides adequate information, the court may conditionally approve the plan”. In paragraph (B), substitute “plan” for “disclosure statement.” Substitute for paragraph (C): “the court may hold a single hearing for confirmation of the plan and approval of the adequacy of the information therein.”

**Amend § 1125(f) of the Bankruptcy Code to read as follows:**

1 § 1125. **Postpetition disclosure and solicitation**

2 (f) Notwithstanding subsection (b), in a small business case—

3 (1) the court may determine that the plan itself provides adequate information  
4 and that a separate disclosure statement is not necessary;

5 (2) the court may approve a disclosure statement submitted on standard forms  
6 approved by the court or adopted under section 2075 of title 28; and

7 (3) (A) after determining under subparagraph (1) that a plan provides adequate  
8 information, the court may conditionally approve the plan subject to final approval  
9 after notice and a hearing;

10 (B) acceptances and rejections of a disclosure statement may be solicited  
11 based on a conditionally approved disclosure statement if the debtor provides  
12 adequate information to each holder of a claim or interest that is solicited, but a  
13 conditionally approved disclosure statement shall be mailed not later than 25  
14 days before the date of the hearing on confirmation of the plan; and

15 (C) the court may hold a single hearing for confirmation of the plan and  
16 approval of the adequacy of the information therein.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1125. **Postpetition disclosure and solicitation**

(f) Notwithstanding subsection (b), in a small business case—

(1) the court may determine that the plan itself provides adequate information  
and that a separate disclosure statement is not necessary;

(2) the court may approve a disclosure statement submitted on standard forms  
approved by the court or adopted under section 2075 of title 28; and

(3) (A) the court may conditionally approve a disclosure statement after  
determining under subparagraph (1) that a plan provides adequate information,  
the court may conditionally approve the plan subject to final approval after notice  
and a hearing;

(B) acceptances and rejections of a plan disclosure statement may be  
solicited based on a conditionally approved disclosure statement if the debtor  
provides adequate information to each holder of a claim or interest that is  
solicited, but a conditionally approved disclosure statement shall be mailed not  
later than 25 days before the date of the hearing on confirmation of the plan; and

(C) ~~the hearing on the disclosure statement may be combined with the~~

hearing on confirmation of a plan. the court may hold a single hearing for confirmation of the plan and approval of the adequacy of the information therein.

**ANALYSIS:** The proposed changes clarify the procedure when the court finds that a separate disclosure statement is not needed in a small business case and deletes subsequent reference to such an omitted disclosure statement.

**PROPOSAL:** Amend § 1127(f)(1) of the Bankruptcy Code to change “(a)” to “(e)”.

**Amend § 1127(f)(1) of the Bankruptcy Code to read as follows:**

- 1 § 1127. **Modification of plan**
- 2 (f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to
- 3 any modification under subsection (e).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1127. **Modification of plan**

(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection ~~(a)~~ (e).

**ANALYSIS:** The amendments to section 1127 relate only to the modification of a confirmed plan where the debtor is an individual – this change corrects and erroneous reference to the modification provision.

**PROPOSAL:** Amend § 1129(a) of the Bankruptcy Code to include a new subparagraph 1129(a)(17): “All requested tax documents have been provided to the court.”

**Amend § 1129(a) of the Bankruptcy Code to read as follows:**

- 1 § 1129. **Confirmation of plan**  
2 (a) The court shall confirm a plan only if all of the following requirements are met:  
3 ...  
4 (17) All requested tax documents have been provided to the court.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

- § 1129. **Confirmation of plan**  
(a) The court shall confirm a plan only if all of the following requirements are met:  
...  
(17) All requested tax documents have been provided to the court.

**ANALYSIS:** Including this new subparagraph codifies BAPCPA § 1128(b), which has not been codified.

**PROPOSAL:** Amend § 1141(d)(5)(C) of the Bankruptcy Code to change “unless” to “the court shall deny a discharge if,”; and delete “no”.

**Amend § 1141(d)(5)(C) of the Bankruptcy Code to read as follows:**

1 § 1141. **Effect of confirmation**  
2 (d)  
3 ...  
4 (5) In a case in which the debtor is an individual—  
5 ...  
6 (C) the court shall deny a discharge if, after notice and a hearing held not  
7 more than 10 days before the date of the entry of the order granting the  
8 discharge, the court finds that there is reasonable cause to believe that—  
9 (i) section 522(q)(1) may be applicable to the debtor; and  
10 (ii) there is pending any proceeding in which the debtor may be found guilty  
11 of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the  
12 kind described in section 522(q)(1)(B).

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1141. **Effect of confirmation**  
(d)  
...  
(5) In a case in which the debtor is an individual—  
...  
(C) unless the court shall deny a discharge if, after notice and a hearing held  
not more than 10 days before the date of the entry of the order granting the  
discharge, the court finds that there is ~~no~~ reasonable cause to believe that—  
(i) section 522(q)(1) may be applicable to the debtor; and  
(ii) there is pending any proceeding in which the debtor may be found guilty  
of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the  
kind described in section 522(q)(1)(B).

**ANALYSIS:** The proposed changes clarify language of circumstances where a discharge must be denied for an individual debtor to whom § 522(q)(1) applies.

**PROPOSAL:** Amend § 1307(c)(9) of the Bankruptcy Code to change “paragraph (1) of section 521” to “paragraph (a)(1) of section 521”.

**Amend § 1307(c)(9) of the Bankruptcy Code to read as follows:**

1 § 1307. **Conversion or dismissal**  
2 (c) Except as provided in subsection (e) of this section, on request of a party in  
3 interest or the United States trustee and after notice and a hearing, the court may  
4 convert a case under this chapter to a case under chapter 7 of this title, or may  
5 dismiss a case under this chapter, whichever is in the best interests of creditors  
6 and the estate, for cause, including—  
7 ...  
8 (9) only on request of the United States trustee, failure of the debtor to file,  
9 within fifteen days, or such additional time as the court may allow, after the filing  
10 of the petition commencing such case, the information required by paragraph  
11 (a)(1) of section 521;

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1307. **Conversion or dismissal**  
(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—  
...  
(9) only on request of the United States trustee, failure of the debtor to file, within fifteen days, or such additional time as the court may allow, after the filing of the petition commencing such case, the information required by ~~paragraph (1) of section 521~~ paragraph (a)(1) of section 521;

**ANALYSIS:** BAPCPA redesignated § 521(1) as § 521(a)(1) – this change corrects the reference.

**PROPOSAL:** Amend § 1307(c)(10) of the Bankruptcy Code to change “paragraph (2) of section 521” to “paragraph (a)(2) of section 521”.

**Amends § 1307 of the Bankruptcy Code to read as follows:**

1 § 1307. **Conversion or dismissal**

2 (c) Except as provided in subsection (e) of this section, on request of a party in  
3 interest or the United States trustee and after notice and a hearing, the court may  
4 convert a case under this chapter to a case under chapter 7 of this title, or may  
5 dismiss a case under this chapter, whichever is in the best interests of creditors  
6 and the estate, for cause, including—

7 ...

8 (10) only on request of the United States trustee, failure to timely file the  
9 information required by paragraph (a)(2) of section 521; or

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1307. **Conversion or dismissal**

(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause, including—

...

(10) only on request of the United States trustee, failure to timely file the information required by paragraph (a)(2) of section 521; or

**ANALYSIS:** BAPCPA redesignated section 521(2) as section 521(a)(2) – this change corrects the reference.

**PROPOSAL:** Amend § 1325(a)(9) of the Bankruptcy Code to designate the second sentence as section 1325(c) (with appropriate reference to section 1325(a)(9)).

**Amend § 1325 of the Bankruptcy Code to read as follows:**

1 § 1325. **Confirmation of plan**

2 (a) Except as provided in subsection (b), the court shall confirm a plan if--

3 ...

4 (9) the debtor has filed all applicable Federal, State, and local tax returns as  
5 required by section 1308.

6 ...

7 (c) For purposes of subsection (a)(5) of this section, section 506 shall not apply  
8 to a claim described in that paragraph if the creditor has a purchase money  
9 security interest securing the debt that is the subject of the claim, the debt was  
10 incurred within the 910-day preceding the date of the filing of the petition, and the  
11 collateral for that debt consists of a motor vehicle (as defined in section 30102 of  
12 title 49) acquired for the personal use of the debtor, or if collateral for that debt  
13 consists of any other thing of value, if the debt was incurred during the 1-year  
14 period preceding that filing.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1325. **Confirmation of plan**

(a) Except as provided in subsection (b), the court shall confirm a plan if--

...

(9) the debtor has filed all applicable Federal, State, and local tax returns as  
required by section 1308.

...

(c) For purposes of ~~paragraph (5)~~ subsection (a)(5) of this section, section 506  
shall not apply to a claim described in that paragraph if the creditor has a  
purchase money security interest securing the debt that is the subject of the  
claim, the debt was incurred within the 910-day preceding the date of the filing of  
the petition, and the collateral for that debt consists of a motor vehicle (as defined  
in section 30102 of title 49) acquired for the personal use of the debtor, or if  
collateral for that debt consists of any other thing of value, if the debt was  
incurred during the 1-year period preceding that filing.

**ANALYSIS:** The proposed change gives the hanging paragraph a proper  
designation.

**PROPOSAL:** Amend § 1325(a)(10) of the Bankruptcy Code to include the new provision: “all requested tax documents have been filed with the court.”

**Amend § 1325(a)(10) of the Bankruptcy Code to read as follows:**

1 § 1325. **Confirmation of plan**  
2 (a) Except as provided in subsection (b), the court shall confirm a plan if--  
3 ...  
4 (8) the debtor has paid all amounts that are required to be paid under a  
5 domestic support obligation and that first become payable after the date of the  
6 filing of the petition if the debtor is required by a judicial or administrative order,  
7 or by statute, to pay such domestic support obligation; and  
8 (9) the debtor has filed all applicable Federal, State, and local tax returns as  
9 required by section 1308.  
10 ...  
11 (10) all requested tax documents have been filed with the court.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1325. Confirmation of plan  
(a) Except as provided in subsection (b), the court shall confirm a plan if--  
...  
(8) the debtor has paid all amounts that are required to be paid under a  
domestic support obligation and that first become payable after the date of the  
filing of the petition if the debtor is required by a judicial or administrative order,  
or by statute, to pay such domestic support obligation; and  
(9) the debtor has filed all applicable Federal, State, and local tax returns as  
required by section 1308.  
...  
(10) all requested tax documents have been filed with the court.

**ANALYSIS:** The new provision codifies BAPCPA § 1228(b), which is uncodified.

**PROPOSAL:** Amend § 1325(b)(1)(B) of the Bankruptcy Code to delete the following language: “to unsecured creditors”.

**Amend § 1325(b)(1)(B) of the Bankruptcy Code to read as follows:**

1 § 1325. **Confirmation of plan**  
2 (b)  
3 (1) If the trustee or the holder of an allowed unsecured claim objects to the  
4 confirmation of the plan, then the court may not approve the plan unless, as of  
5 the effective date of the plan—  
6 (A) the value of the property to be distributed under the plan on account of  
7 such claim is not less than the amount of such claim; or  
8 (B) the plan provides that all of the debtor's projected disposable income to  
9 be received in the applicable commitment period beginning on the date that the  
10 first payment is due under the plan will be applied to make payments under the  
11 plan.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1325. **Confirmation of plan**  
(b)  
(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—  
(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or  
(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to ~~unsecured creditors~~ under the plan.

**ANALYSIS:** Plan payments are distributed to a variety of creditors under a chapter 13 plan, including secured creditors and the chapter 13 trustee. This provision appears to require that all payments go to unsecured creditors only. No reference is made to it in the legislative history, and it appears to be a mistake.

**PROPOSAL:** Amend § 1501(c)(2) of the Bankruptcy Code to replace “who have debts within the limits of section 109(e)” with “who are eligible under section 109(e) to file a chapter 13 case”.

**Amend § 1501(c)(2) of the Bankruptcy Code to read as follows:**

1 § 1501. **Purpose and scope of application**

2 (c) This chapter does not apply to—

3 (1) a proceeding concerning an entity, other than a foreign insurance company,  
4 identified by exclusion in section 109(b);

5 (2) an individual, or to an individual and such individual's spouse, who are  
6 eligible under section 109(e) to file a chapter 13 case and who are citizens of the  
7 United States or aliens lawfully admitted for permanent residence in the United  
8 States; or

9 (3) an entity subject to a proceeding under the Securities Investor Protection  
10 Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a  
11 commodity broker subject to subchapter IV of chapter 7 of this title.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1501. **Purpose and scope of application**

(c) This chapter does not apply to—

(1) a proceeding concerning an entity, other than a foreign insurance company,  
identified by exclusion in section 109(b);

(2) an individual, or to an individual and such individual's spouse, ~~who have debts within the limits specified in section 109(e)~~ who are eligible under section 109(e) to file a chapter 13 case and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

**ANALYSIS:** The purpose of this provision was to exclude those who should file under chapter 13, but not to exclude those who are ineligible because of other restrictions on chapter 13. The proposed language clarifies this result.

**PROPOSAL:** Amend § 1517(a)(2) of the Bankruptcy Code to include the following language: “within the meaning of section 101(24)”

**Amend § 1517(a)(2) of the Bankruptcy Code to read as follows:**

**§ 1517. Order granting recognition**

(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

(3) the petition meets the requirements of section 1515.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

**§ 1517. Order granting recognition**

(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

(2) the foreign representative applying for recognition is a person or body within the meaning of section 101(24); and

(3) the petition meets the requirements of section 1515.

**ANALYSIS:** The proposed changes would restore parallel language in the UNCITRAL Model Law on Cross-Border Insolvency on which chapter 15 is based (“body” has no particular meaning without reference to the definition of “foreign representative” in § 101(24), which also derives from the Model Law).

**PROPOSAL:** Amend § 1520(a)(2) of the Bankruptcy Code to change “552” to “542”.

**Amend § 1520(a)(2) of the Bankruptcy Code to read as follows:**

1 § 1520. **Effects of recognition of a foreign main proceeding**  
2 (a) Upon recognition of a foreign proceeding that is a foreign main proceeding--  
3 (1) sections 361 and 362 apply with respect to the debtor and the property of  
4 the debtor that is within the territorial jurisdiction of the United States;  
5 (2) sections 363, 549, and 542 apply to a transfer of an interest of the debtor in  
6 property that is within the territorial jurisdiction of the United States to the same  
7 extent that the sections would apply to property of an estate;  
8 (3) unless the court orders otherwise, the foreign representative may operate  
9 the debtor's business and may exercise the rights and powers of a trustee under  
10 and to the extent provided by sections 363 and 552; and  
11 (4) section 552 applies to property of the debtor that is within the territorial  
12 jurisdiction of the United States.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

§ 1520. **Effects of recognition of a foreign main proceeding**  
(a) Upon recognition of a foreign proceeding that is a foreign main proceeding--  
(1) sections 361 and 362 apply with respect to the debtor and the property of  
the debtor that is within the territorial jurisdiction of the United States;  
(2) sections 363, 549, and ~~552~~ 542 apply to a transfer of an interest of the  
debtor in property that is within the territorial jurisdiction of the United States to  
the same extent that the sections would apply to property of an estate;  
(3) unless the court orders otherwise, the foreign representative may operate  
the debtor's business and may exercise the rights and powers of a trustee under  
and to the extent provided by sections 363 and 552; and  
(4) section 552 applies to property of the debtor that is within the territorial  
jurisdiction of the United States.

**ANALYSIS:** The intention in chapter 15 was to require the turnover of property, as provided by § 542, to the foreign representative upon the recognition of a foreign main proceeding. See Legislative History, at 115 (which contains this same typographical error in one of its two references to § 542).

**PROPOSAL:** Amend 28 U.S.C. § 158(a)(3) of the Bankruptcy Code to delete “and with leave of court, from interlocutory orders and decrees”.

**Amend 28 U.S.C. § 158(a)(3) of the Bankruptcy Code to read as follows:**

1 28 U.S.C. § 158  
2 (a) The district courts of the United States shall have jurisdiction to hear  
3 appeals[--]  
4 (1) from final judgments, orders, and decrees;  
5 (2) from interlocutory orders and decrees issued under section 1121(d) of title  
6 11 increasing or reducing the time periods referred to in section 1121 of such  
7 title; and  
8 (3) with leave of the court, from other interlocutory orders and decrees;  
9 of bankruptcy judges entered in cases and proceedings referred to the  
10 bankruptcy judges under section 157 of this title. An appeal under this subsection  
11 shall be taken only to the district court for the judicial district in which the  
12 bankruptcy judge is serving.

**(Legislative Draft - - Additions are underlined; deletions struck through)**

28 U.S.C. § 158  
(a) The district courts of the United States shall have jurisdiction to hear  
appeals[--]  
(1) from final judgments, orders, and decrees;  
(2) from interlocutory orders and decrees issued under section 1121(d) of title  
11 increasing or reducing the time periods referred to in section 1121 of such  
title; and  
(3) with leave of the court, from other interlocutory orders and decrees;  
~~and, with leave of the court, from interlocutory orders and decrees~~ of bankruptcy  
judges entered in cases and proceedings referred to the bankruptcy judges  
under section 157 of this title. An appeal under this subsection shall be taken  
only to the district court for the judicial district in which the bankruptcy judge is  
serving.

**ANALYSIS:** The proposed change eliminates duplicative language.